



# राजपत्र, हिमाचल प्रदेश

## हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

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शिमला, शुक्रवार, 26 अप्रैल, 2013/6 वैशाख, 1935

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हिमाचल प्रदेश सरकार

**HIGH COURT OF HIMACHAL PRADESH ,SHIMLA-171 001**

NOTIFICATION

*Shimla, the 24<sup>th</sup> April, 2013*

**No. HHC/Admn.3 (283)/90.**—14 days commuted leave on and with effect from 20-03-2013 to 02-04-2013 is hereby-sanctioned ex-post-facto, in favour of Shri Chhape Ram, Deputy Registrar—cum- Special Secretary to Hon'ble the Chief Justice of this Registry.

Certified that Shri Chhape Ram has joined the same post and at the same station from where he had proceeded on leave after the expiry of the above leave period.

Certified that Shri Chhape Ram would have continued to officiate the same post of Deputy Registrar-cum Special Secretary to Hon'ble the Chief Justice, but for his proceeding on leave.

By order,  
Sd/-  
Registrar General.

**HIGH COURT OF HIMACHAL PRADESH, SHIMLA-171 001****NOTIFICATION***Shimla, the 24th April, 2013*

**No. HHC/Admn.3 (137)/79-I.**—07 days commuted leave on and with effect from 07-03-2013 to 13-03-2013 is hereby-sanctioned ex-post-facto, in favour of Shri Jawahar Singh Thakur, Court Master of this Registry.

Certified that Shri Jawahar singh Thakur has joined the same post and at the same station from where he had proceeded on leave after the expiry of the above leave period.

Certified that Shri Jawahar Singh Thakur would have continued to officiate the same post of Court Master, but for his proceeding on leave.

By order,  
Sd/-  
*Registrar General.*

**HIGH COURT OF HIMACHAL PRADESH, SHIMLA-171 001****NOTIFICATION***Shimla, the 22nd April, 2013*

**No. HHC/E.5-10/73-VII.**—In exercise of the powers vested in it under Section 18 of the H.P. Courts Act, 1976 read with Rule 3 of the Appointment and Control Rules of Superintendents to the District and Sessions Judges in Himachal Pradesh, the Hon'ble High Court has been pleased to promote and appoint Smt. Savita Sharma, Superintendent Grade-II, Office of the Civil Judge (Junior Division)-cum-JMIC, Solan, H. P., and Shri Jeet Singh, Superintendent Grade-II, Office of the Civil Judge (Junior Division)-cum-JMIC(II) Kangra, H.P, as Superintendents Grade-I to the District and Sessions Judges in the Pay Band of Rs.15600-39100 with Grade-Pay of Rs. 5400/-, with immediate effect and post them as under:—

1. Smt. Savita Sharma, newly promoted Superintendent Grade-I is posted as Superintendent Grade-I, to the District and Sessions Judge, Sirmour at Nahan, H. P. with immediate effect.
2. Sh. Jeet Singh, newly promoted Superintendent Grade-I is posted as Superintendent Grade-I, to the District and Sessions Judge, Bilaspur on and with effect from 3-5-2013.

By order,  
Sd/-  
*Registrar General.*

## PROCLAMATION UNDER ORDER 5, RULE of CPC

**IN THE COURT OF PURENDER VAIDYA PRESIDING JUDGE, INDUSTRIAL  
TRIBUNAL-CUM-LABOUR COURT, SHIMLA, H. P.***In Case:*

Shri Manu Partap Singh,  
S/O Late Shri Prem Chand,  
R/O Shanti Bhawan, Below Government School,  
Bhagwati Nagar, Lower Khalini, District Shimla, H. P.

*. . Petitioner.**Versus*

The Commissioner,  
Municipal Commissioner,  
The Mall, Shimla-1, H.P.  
Respondent.

Notice to petitioner.

Whereas in the above noted case it has been proved to the satisfaction of the court that above named petitioner cannot be served in the ordinary way. Hence this proclamation is hereby issued against him to appear in this court on 13-5-2013 at 10.00 AM at Shimla to defend the case personally or through an authorized representative.

Given under my hand and seal of this court 26th March 2013.

**PURENDER VAIDYA,**  
*Industrial tribunal-cum-Labour Court,*  
*Shimla, H.P.*

**LABOUR AND EMPLOYMENT DEPARTMENT**

## NOTIFICATION

*Shimla-2, the 17th April, 2013*

**No. Sharm (A) 7-1/2005 (Award)-part-file.**—In exercise of the powers vested in her under section 17(1) of the Industrial Disputes Act, 1947, the Governor Himachal Pradesh is pleased to order the publication of awards announced by the Presiding Officer, Labour Court, Shimla of the following cases on the website of Labour & Employment Department:—

| Sl. No. | Case No. | Title of the Case  | Date of Award |
|---------|----------|--|---------------|
| 1.      | 91/2009  | Smt./Shri Nish Thakur V/s Himachal Futuristic Communion, Ltd. Chambaghat, Solan H.P.           | 26-3-2013     |
| 2.      | 93/2009  | Sh. Rajnesh Bala V/s -do-  | 26-3-2013     |
| 3.      | 94/2009  | Sh. Seema Sharama V/s—do-  | 26-3-2013     |
| 4.      | 95/2009  | Sh. Gyatri Seth V/s -do-   | 26-3-2013     |
| 5.      | 27/2011  | Sh. Gian Singh V/s M/s DFO Rajgarh & Ors.  | 26-3-2013     |
| 6.      | 2/2008   | Sh. Madan Lal V/s The Headmaster, Lawareance School, Snawar Tehsil Kasauli, Distt. Solan, H.P. | 30-3-2013     |

|     |          |   |           |
|-----|----------|---|-----------|
| 7.  | 126/2004 | Smt. Seema Mehta V/s Chairman-cum-Deputy Commissioner Indian Red Cross Society, Solan, H.P. & Ors.          | 28-3-2013 |
| 8.  | 62/2012  | Sh. Shyam Singh Barsanta V/s The Project Manager Administration and HR Everonn Education Ltd. Shimla & Ors. | 7-3-2013  |
| 9.  | 18/2010  | Sh. Sandeep Kumar V/s M/s Richfeel Health and Beauty Pvt. Ltd. Solan.                                       | 14-3-2013 |
| 10. | 49/2011  | Sh. Pardeep Kumar V/s M/s Johnson & Johnson Ltd. Baddi.   | 25-3-2013 |
| 11. | 14/2012  | Samtal Workers Union V/s M.D. Samtal Group Corporoter & Others.   | 2-3-2013  |

By order,  
Sd/-

*Addl. Chief Secretary (Labour & Employment).*

**IN THE COURT OF PURENDER VAIDYA, PRESIDING JUDGE, INDUSTRIAL  
TRIBUNAL CUM-LABOUR COURT, SHIMLA, (H.P)**

**Ref. No. 126 of 2004**

Instituted on 1-11-2004

Decided on 28-3-2013

Smt. Seema Mehta W/o Shri Ghyanshyam Mehta, through HP State D.C Office Employees Union, Solan . . . *Petitioner.*

*Vs*

1. Chairman-cum-Deputy Commissioner Indian Red Cross Society, Solan, HP.
2. Financial Commissioner-cum-Secretary (Revenue) to the Government of Himachal Pradesh . . . *Respondents*

**Reference under section 10 of the Industrial Disputes Act, 1947**

*For petitioner :* Shri Jagdish Thakur, Advocate.

*For respondent No.1 :* Shri Lalit Sharma, Advocate.

*For respondent No.2 :* Shri Jagdish Kanwar, Dy. DA.

**AWARD**

The following reference has been received from appropriate government for adjudication:

**“Whether the demand of President, HP State D.C Office Employees Union, Solan through their demand notice dated 29-4-2003 (copy enclosed) from the Chairman-cum-Deputy Commissioner, Indian Red Cross Society Solan, HP to regularize Smt. Seema Mehta as clerk from the initial appointment is proper and justified?”**

**“Whether Smt. Seema Mehta monthly honorarium paid clerk in the office of above employer may be considered to be member the above union? If yes from which date aggrieved workman is entitled for regularization and with what reliefs? If not, what are its legal affects?”**

2. The claim was filed by the petitioner through President D.C office Employees Union, Solan stating that petitioner Smt. Seema Mehta was appointed as clerk-cum-typist on 10-1-1989 by the Deputy Commissioner, Solan in the capacity of Chairman Indian Red Cross Society Solan on the fixed emoluments of ₹ 750/- per month. In the year of 1990, the petitioner was verbally asked by the Deputy Commissioner, Solan to work as PBX Clerk in his office besides discharging the duties of clerk-cum-typist for Indian Red Cross Society, Solan. The petitioner completed more than ten years of service and as per the Government Policy she was entitled to be regularized. Therefore, she made representation to Financial Commissioner-cum-Secretary (Revenue) for regularization but her representation was rejected in view of opinion of law department that Indian Red Cross Society was an industry, hence, her case fell within the preview of Industrial Disputes Act, 1947. The case was sent to Labour Commissioner by the Secretary (L&EP) and thereafter the case was referred to this Court. The petitioner demanded regularization of her services after the completion of ten years of service without any break. Hence, the claim petition was filed.

3. Respondent no.1 contested the claim petition by filing a reply wherein preliminary objections as to locus standi and maintainability were taken. On merits, it was stated that the employees of Indian Red Cross Society, Solan were not member of D.C Office Employees Union and when it came to the knowledge of replying respondent that petitioner was working as PBX Operator, then she was immediately shifted to the place of her appointment *i.e* Indian Red Cross Society, Solan, It was admitted that petitioner was appointed as clerk-cum-typist in Indian Red Cross Society. It was denied that she was directed to perform the duties of PBX Clerk. It was further stated that in the absence of R&P Rules or substantive post, the services of petitioner could not be regularized as alleged by her. The petitioner did not complete ten years of continuous service in the Government department, so, her services could not be regularized. Hence, the demand raised by the petitioner through union was liable to be rejected.

4. Petitioner filed rejoinder wherein she denied all the averments made by respondent no.1 in reply and further reasserted the facts already stated by her in claim petition.

5. On the pleadings of the parties, the following issues were framed:—

1. Whether the petitioner is entitled for regularization as per demand notice dated 29-4-2003? If so, its effect? . . .OPP
2. Whether the petitioner has no locus standi to file the present petition? . . .OPR
3. Relief.

6. The aforesaid issues were read over and explained to both the parties. No other issue was pressed or claimed. Evidence of both the parties on the aforesaid issues were recorded.

7. Initially the reference was decided by my Ld. Predecessor *vide* award dated 16-1-2007 and the reference was answered in favour of petitioner. Aggrieved by said award, the respondent no.1 preferred writ petition no. 259/2007 before the Hon'ble High Court which was disposed of by the Hon'ble High Court *vide* order dated 7-9-2012 with the direction to implead Financial Commissioner-cum-Secretary Revenue to the Government of Himachal Pradesh as necessary party and remanded the case back to this Court with further direction to appreciate the documents Ex. R-6 and Ex. R-7 and any other documents pertaining to the correspondence between Deputy Commissioner, Solan and Financial Commissioner-cum-Secretary Revenue to the Government of H.P.

8. Pursuant to said direction the Financial Commissioner-cum-Secretary Revenue to the Government of Himachal Pradesh was impleaded as party (respondent no.2) and reply was also filed by respondent no.2 wherein preliminary objections as to supersession of material facts, locus

standi and maintainability were raised. On merits, it was stated that the petitioner was appointed in the Indian Red Cross Society, Solan and she worked in the office of Society, therefore, she could not be regularized as a clerk in the Government Department. It was stated by the then Deputy Commissioner, Solan in a letter addressed to Financial Commissioner-cum-Secretary Revenue that the petitioner was the employee of Red Cross Society and not the employee of state government. As such she was not covered by CCS Rules which are only applicable to Government Employees. Although, in another letter Deputy Commissioner, Solan, raised no objection, if petitioner was regularized, against vacant post. Since, the petitioner is the employee of Indian Red Cross Society, Solan, hence, respondent no. 2 also prayed to dismiss the petition.

9. In the light of reply filed by respondent no. 2, no fresh issue was claimed or pressed. Hence, on the already framed issues, respondent no.2 led evidence.

10. I have heard both the parties and gone through the record carefully.

11. For the reasons to be recorded hereinafter my findings on the aforesaid issues are as under:

*Issue No.1:* No.

*Issue No. 2 :* No.

*Relief:* Reference answered in negative against the petitioner per operative part of award.

### **Reasons for finding**

*Issue No.1 :*

12. After hearing both the parties and going through the record carefully I am of the considered opinion that petitioner is not entitled for regularization as per demand notice dated 29.4.2003. For the reasons to be recorded hereinafter, petitioner Seema Mehta is the employee of Indian Red Cross Society and not the employee of D.C Office, Solan. As the result, she is not member of HP State D.C Office Employees Union, Solan. Since, Smt. Seema Mehta is not a government employee, then, her services cannot be regularized as per government policy on completion of ten years of continuous service.

13. While remanding the case to this Court Hon'ble High Court has issued the following directions:

**“In these circumstances, it would be in the fitness of things, the case is remanded to the Industrial Tribunal with this direction that the Financial Commissioner-cum-Secretary (Revenue) to the Government of Himachal Pradesh be impleaded as party respondent and then proceed further with the case. It is clarified that the learned Tribunal will confine attention only to Annexures:R6 and R7 and any other correspondence/modification pursuant to these two communications having been sent by the Deputy Commissioner to the Financial Commissioner or from the Commissioner to the Deputy Commissioner. The issue so far as maintainability and locus standi are concerned will not be disturbed by the learned Tribunal.”**

14. In compliance of said directions, Financial Commissioner-cum-Secretary (Revenue) was arrayed as a party (respondent no.2) Hon'ble High Court has directed this Court to confine attention only to Annexure R-6 and R-7 and any other corrigendum between Financial Commissioner and Deputy Commissioner, Solan. Ld. Dy. DA has drawn attention to the letters Ex. R-6 and Ex. R-7 which have been tendered in evidence on behalf of respondent no.2 as Ex. RD and

Ex. RD-1. Ex. R-6 is revealing that Deputy Commissioner, Solan has written to Financial Commissioner-cum-Secretary (Revenue) that petitioner Seema Mehta was appointed as clerk on 10.1.1989 by the Indian Red Cross Society, Solan and she is in continuous service but has not been regularized. Therefore, Deputy Commissioner, Solan has requested to consider her case sympathetically for regularization. He has also written that fourteen posts of clerk are lying vacant and he has got no objection if the services of Seema Mehta are regularized against the vacant post of clerk. Similar request has made by Deputy Commissioner, Solan to Financial Commissioner-cum-Secretary (Revenue) vide letter Ex. R-7 dated 5-10-2006.

15. Ld. Dy. DA has also placed on record copy of letter Ex. RA dated 23.11.2006 written to Deputy Commissioner, Solan by Financial Commissioner-cum Secretary (Revenue) wherein it has been categorically stated that the representation regarding the regularization of services of petitioner has been examined and said letter is further revealing that it has observed that Seema Mehta clerk is an employee of Indian Red Cross Society and not the employee of government. The Red Cross Society is registered under Societies Registration Act, 1860 as such government has nothing to do with the proposal. Therefore, letter Ex. RA is clear and specific evidence on record to show that Financial Commissioner-cum-Secretary (Revenue) has turned down the request of Deputy Commissioner, Solan to regularize the services of petitioner as a clerk in D.C Office, Solan against vacant post. After due consideration, I find legal substance in the aforesaid contents of Ex. RA.

16. From the pleadings as well as evidence of the parties, it is undisputed fact that Seema Mehta was recruited as clerk in Indian Red Cross Society, Solan on 10-1-1989 on the monthly salary of ₹ 750/- which was increased periodically. Ex. PU is the salary chart of petitioner which is revealing that lastly in May, 2006 her salary was increased to ₹ 3,000/- per month and it was being paid by the Indian Red Cross Society, Solan. This fact has been admitted by petitioner Seema Mehta when she stepped into the witness box as PW-1. That means she was never paid salary by the government. This fact is sufficient to establish that petitioner Seema Mehta never remained on the pay roll of state of H.P.

17. The testimony of petitioner as well as statements of her other witnesses PW-2, Devi Singh Reted. Superintendent, Red Cross society, Soaln, PW-3 Govind Ram, the than PA to Deputy Commissioner, Solan and PW-4 U.S Thakur, Secretary Red Cross Society are revealing that from 1990 petitioner worked as PBX clerk in the D.C Office, Solan as per the verbal directions of the then Deputy Commissioner, Solan.

18. On behalf of respondent RW-1 Subhash Saklani, Assistant Commissioner to Deputy Commissioner, Solan has been examined and he has stated that as per record there are no written orders issued by the Deputy Commissioner to the petitioner to work in PBX exchange. He has also stated that the petitioner worked in PBX exchange in D.C Office Solan for about ten years.

19. The aforesaid evidence are revealing that petitioner Seema Mehta was the employee of Indian Red Cross Society, Solan and she worked for more than ten years in D.C Office Solan, in PBX exchange as a clerk consequent upon the verbal directions of the then Deputy Commissioner, Solan. It is also undisputed fact that the Deputy Commissioner, Solan is also Chairman of Red Cross Society, Solan. It shows that the Chairman of Red Cross Society, Solan had asked his employee to work in the D.C Office. But this action on the part of Deputy Commissioner, Solan would not make the petitioner as a government employee.

20. No doubt, PW-3 Govind Ram, PA to Deputy Commissioner, Solan has stated that in the year 1989 when petitioner was appointed in Red Cross Society, the clerks in D.C Office were being appointed through employment exchange by the Deputy Commissioner who was the

appointing authority. He has further stated that the petitioner was appointed in D.C Office though employment exchange but no record from the employment exchange was produced in evidence by the petitioner. I do not find any evidence to show that the post of clerk in D.C Office was advertised through employment exchange and in pursuance of said advertisement the petitioner was selected with due process. As the result, the request of deputy Commissioner, Solan to Financial Commissioner-cum-Secretary (Revenue) vide letter Ex. R-6 dated 5-10-2006 for sympathetically considering the case of petitioner for regularization of her services would not give any right to the petitioner to get herself regularized as a clerk in D.C office, Solan despite the fact that at the relevant time there was vacancy of post of clerk. That is why vide letter Ex. RA dated 23-11-2006, the Financial Commissioner-cum-Secretary (Revenue) has turned down the request of Deputy Commissioner, Solan by stating that petitioner Seema Mehta is the employee of Red Cross society, Solan and government has nothing to do with the proposal submitted by Deputy Commissioner, Solan.

21. There is nothing on record to show that the petitioner remained on pay roll of D.C Office, Solan and she was paid salary by the government. On the other hand, I find sufficient evidence to establish that petitioner was appointed as a clerk in the Red Cross Society, Solan and her salary has been paid by the Red Cross society. If the petitioner had worked in D.C office Solan on the verbal directions of Deputy Commissioner, Solan, that would not give any right to her to be regularized in the government department. Hence, the petitioner never remained as an employee of government department. When petitioner herself is admitting that she is getting salary from the Red Cross Society, therefore, for all intends and purposes she is the employee of Indian Red Cross Society, Solan, hence, she is not governed by CCS Rules as applicable to government employees and the government policy for regularization is not applicable to her case.

22. Accordingly, for the aforesaid reasons, this issue is decided against the petitioner.

*Issue No. 2 :*

23. As far as this issue is concerned, Hon'ble High Court in CWP No. 259/2007 has categorically held while remanding the case to this Court that the issues as to maintainability and locus standi will not be disturbed. My Ld. Predecessor has decided this issue against the respondent. Hence, the finding on this issue is not disturbed as per the directions of Hon'ble High Court. Consequently, the same is decided against the respondent.

*Relief :*

For the reasons recorded hereinabove, the claim petition is dismissed and the reference is decided against the petitioner as the demand raised by President of HP State D.C Office Employees Union, Solan for regularization of the services of petitioner vide demand notice dated 29-4-2003 is not proper and justified and it is also held that Seema Mehta is not the employee of D.C Office Solan as such she is not member of HP State D.C Office Employees Union Solan and she cannot be regularized as a clerk in D.C Office Solan. It is also clarified that Seema Mehta petitioner is the employee of Indian Red Cross Society, Solan. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 28 th Day of March, 2013.

By order,  
Sd/-  
Presiding Judge,  
Industrial ,Tribunal-cum-Labour Court, Shimla.



**IN THE COURT OF PURENDER VAIDYA, PRESIDING JUDGE, INDUSTRIAL  
TRIBUNALCUM-LABOUR COURT, SHIMLA, (H.P)**

**Ref. No. 95 of 2009**

Instituted on. 18-11-2009

Decided on 26-3-2013

Gayatri Seth W/o Shri Sameer Seth R/o Asirwad Bhawan, Near GPO Solan, Tehsil &  
District Solan, H. P. . . Petitioner

*Vs*

M/s Himachal Futuristic Communication, Ltd., (Wire-Line/Wire Less Division)  
Chambaghat, District Solan, H. P. . . Respondent

**Reference under section 10 of the Industrial Disputes Act, 1947**

*For petitioner :* Shri J.C Bhardwaj, AR.

*For respondent :* Shri Rahul Mahajan, Advocate.

**AWARD**

The following reference has been received from appropriate government for adjudication:

**“Whether termination of the services of Smt. Gyatri Seth W/o Shri Sameer Seth *w.e.f.* 31-10-2008 by the management of M/s Himachal Futuristic Communication Ltd. (Wire Line/Wire Less Division) Chambaghat, District Solan, H. P. without serving any chargesheet and without holding any enquiry and without complying with the section 25-N of the Industrial Disputes Act, 1947 is legal and justified? If not, to what back wages, seniority service benefits and relief the above aggrieved is entitled to?”**

2. The petitioner filed the claim petition stating that she was appointed as Technical Assistant by the respondent on 25-1-1994 and as such joined her duties and thereafter she remained on probation for six months and after successfully completing her probation period she was confirmed as Technical Assistant on 27-7-1994. The respondent illegally terminated her services on 31-10-2008 without any enquiry or any notice. The petitioner stated that she was a skilled workman and the Vice President (works) was not competent authority to terminate her services. Petitioner completed seventeen years of service with full devotion but no reason was assigned when she was terminated. In fact, the termination of petitioner was the result of a conspiracy at the instance of one workman Balwant Singh. The petitioner along-with other workers raised voice against the wrong doing of Balwant Singh who connived with the respondent management and as such the petitioner was made victim raising voice against Shri Balwant Singh. The respondent management without conducting any enquiry against the petitioner, terminated her services by declaring the petitioner as surplus employee of the company and no opportunity of being heard was given to the petitioner. Before terminating the services of petitioner, respondent management served three month's notice upon the petitioner but never paid any retrenchment compensation as per the statutory requirement and conditions of section 25-N of Industrial Disputes Act, 1947, hence, the termination of petitioner was bad in the eyes of law. The respondent also committed breach of section 25-G and 25-H of Industrial Disputes Act as they retained junior persons after terminating the petitioner. Hence, petitioner prayed to set aside her termination orders dated 31-10-2008 and also prayed that she be reinstated in service with full back wages, seniority, continuity along-with other consequential benefits.

3. The respondent contested the claim petition by filing a reply wherein it was not disputed that the petitioner was employed by the respondent. It was stated that in the appointment letter of petitioner it was clearly mentioned that her services could be terminated by serving one months notice and said clause was subsequently amended and three month's notice was added in the said clause. The services of petitioner were terminated *w.e.f.* 31.10.2008 *vide* letter dated 1-8-2008. The respondent stated that the petitioner was not a workman as she was Engineer and various employees were working under her. She was discharging the supervisory functions and she was governed by the Executive Conduct Discipline and Appeal Rules. As such petitioner did not fall within the definition of workman under section 2(s) of the Industrial Disputes Act, 1947. *Vide* letter dated 1-8-2008, petitioner was clearly informed that there was no manufacturing activity in the plant, so no work was expected in near future and for the aforesaid reason, her services were terminated. Respondent denied that the services of petitioner were terminated at the instance of Balwant Singh. It was also denied that the management had taken side with Balwant Singh. The other allegations of petitioner were also categorically denied. It was stated that after her termination the petitioner as gainfully employed. The respondent also denied that violation of section 25-G and 25-H of Industrial Disputes Act, 1947. Consequently, respondent prayed for the dismissal of the petition.

4. Petitioner filed rejoinder wherein she denied all the averments made by the respondent in reply and further reasserted the facts already stated by her in claim petition.

5. On the pleadings of the parties, the following issues were framed:—

4. Whether the termination of the services of petitioner by the respondent management without serving any chargesheet and without holding any enquiry and without complying with section 25-N of the Industrial Disputes Act, 1947 is illegal and unjustified as alleged ?  
..OPP
5. If issue no.1 is proved in affirmative to what service benefits the petitioner is entitled to?  
.. OPP
6. Whether the petition is not maintainable in view of the preliminary objections No. 1 and 3 as alleged?  
.. OPR
7. Relief.

6. The aforesaid issues were read over and explained to both the parties. No other issue was pressed or claimed. Evidence of both the parties on the aforesaid issues were recorded.

7. I have heard both the parties and gone through the record carefully.

8. For the reasons to be recorded hereinafter my findings on the aforesaid issues are as under:

*Issue No.1 :* Yes.

*Issue No.2:* Entitled for reinstatement with seniority and continuity but without back wages.

*Issue No.3:* No.

*Relief:* Reference answered in negative against the respondent per operative part of award.

**Reasons for finding**

*Issue No.1 & 3 :*

9. Both these issues are interconnected and can be disposed of by a single finding.

10. After hearing both the parties and going through the record carefully, I am of the considered opinion that petitioner falls within the definition of workman as defined under section 2(s) of Industrial Disputes Act, 1947 and petitioner has also established that her services were wrongly and illegally terminated by the respondent without complying with the provisions of Industrial Disputes Act, 1947.

11. Section 2(s) of Industrial Disputes Act, 1947 reads as under:

**“workman” means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person—**

- (i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or**
- (ii) who is employed in the police service or as an officer or other employee of a prison; or**
- (iii) who is employed mainly in a managerial or administrative capacity; or**
- (iv) who, being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.**

12. Thus, from the aforesaid provision of law, it is clear that a person who is employed in Supervisory capacity will not be treated as a workman. The respondent has taken the plea that petitioner was working as Engineer and she was discharging supervisory function, so, she was not a workman. It is undisputed that petitioner was initially appointed as a Technician Assistant in 1994 and subsequently she was promoted to Engineer. The respondent has placed on record copy of Executive Conduct Discipline and Appeal Rules Ex. RA-3. As per section 2 (c) of said Rules, “Executive” means an employee of company in the scale (3250-500) and above. The word executives and officers are interchangeably used. They are in managerial or supervisory cadre. Officers/Executives are authorized to take decisions and correspond, with outside agencies independently. Depending upon nature of duties executives may or may not have subordinate staff under them.

13. No doubt, as per aforesaid rule, it is not required that the executive must have subordinate staff under him but keeping in view the plea of respondent, it appears that respondent has alleged that petitioner was having subordinate staff under her. The petitioner in her testimony as PW-1 has categorically deposed that no workman was working under her and she was not discharging any administrative or managerial functions. In her cross-examination, she had denied

that she had been doing supervisory and managerial function. She has also denied that she was governed by the Executive Conduct Discipline and Appeal Rules.

14. On behalf of respondent RW-1 Shri M.S Gupta, the General Manager of the company has given a general statement that the petitioner was discharging the duties of Engineer. But in his cross-examination, he has stated that he does not have any record to show that any other person was working under the petitioner. He has stated that petitioner used to issue verbal instructions to the workers/technicians who were working under her. But respondent did not examine any such technicians or workmen who were working under the petitioner. RW-1 has also stated that petitioner used to sanction short leave and used to forward leave application to the authority but again no such leave application was produced in evidence. RW-1 has further stated that petitioner was not authorized to issue any show cause notice to any workman.

15. Hence, taking into account all the aforesaid evidence on record, I am of the considered opinion that petitioner was not discharging supervisory or managerial function and as such she was working under the respondent as a workman as defined under section 2(s) of the Industrial Disputes Act, 1947.

16. On behalf of respondent it was argued that the service condition of petitioner would be governed by conditions laid down in her appointment letter Ex. P-1. After due consideration, I am not in agreement with the aforesaid submission for the reasons discussed hereinabove. The petitioner is a workman under section 2(s) of Industrial Disputes Act, 1947, therefore, she would be governed by the statutory provisions of Industrial Disputes Act, 1947 while adjudicating upon her termination. Therefore, the conditions laid down in appointment letter Ex. P-2 would not be seen but the statutory provisions of Industrial Disputes Act, 1947 would be relevant.

17. The petitioner has categorically deposed that when she was terminated from service at that time more than three hundred workmen were working with the respondent. The respondent has not disputed this fact. Therefore, section 25-N of Industrial Disputes Act, 1947 is relevant which lays down the conditions precedent to retrenchment of workman, it reads as under:

**“Conditions precedent to retrenchment of workmen.—**(1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,—

- (a) the workman has been given three months' notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and
- (b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf”.

18. Under the aforesaid provision of law, respondent was under the legal obligation to serve three month's notice in writing upon the petitioner before terminating her services. It is undisputed that the petitioner was appointed as a Technical Assistant vide appointment letter Ex. P-1 dated 24-7-1994. Since, the petitioner is a workman under the Industrial Disputes Act, 1947, therefore, before terminating her services, respondent was to comply with the statutory provisions of the Act and as per section 25-N, respondent was required to serve three month's notice upon the petitioner.

19. Ex. P-10 is the notice dated 1-8-2008 served upon the petitioner by the respondent *vide* which her services were terminated *w.e.f.* 31-10-2008. No doubt, in this notice the statutory period of three month's has been given to the petitioner but at the same time I am of the view that this notice is not sufficient to comply with the provisions of section 25-N of the Act. As section 25-N (1) (b) the respondent was required to seek prior permission of the appropriate government or such authority as may be specified by the Government by notification by making an application in this behalf before terminating the services of petitioner. In this case, no such permission has been brought in evidence by the respondent. For the same respondent was required to file an application as section 25-N (2) says that an application for permission under sub section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workman concerned in the prescribed manner. There is nothing in evidence to suggest that respondent has complied with the aforesaid provisions of law. I do not find any evidence to show that respondent has obtained the permission from the appropriate government by making an application and the application was also served upon the petitioner. In the absence of compliance of provisions of section 25-N of the Act, the termination of petitioner is illegal and unjustified and liable to set aside.

20. On behalf of petitioner arguments were advanced that her termination was also against the provisions of sections 25-G and 25-H of the Industrial Disputes Act, 1947. No doubt, the petitioner has filed the claim petition in support of said plea. But this Court is to answer the reference and I am of the view that the claim petition must be in consonance with the scope of reference. The reference is specifically qua the illegality of termination of services of petitioner in violation of section 25-N of Industrial Disputes Act, 1947. There is no reference that services of petitioner were terminated in violation of sections 25-G and 25-H of the Industrial Disputes Act, 1947. As the result, the claim filed by the petitioner pleading the violation of sections 25-G and 25-H of Industrial Disputes Act, 1947 is beyond the scope of reference. Consequently, the same cannot be discussed and no finding can be given by this Court regarding the alleged violation of section 25-G and 25-H of Act on the part of respondent.

21. Accordingly, for the aforesaid reasons issue no.1 is answered in favour of petitioner whereas issue no.3 is answered against the respondent as petition is maintainable because the petitioner is a workman under section 2(s) of the Industrial Disputes Act, 1947 and it stands proved that her services were wrongly and illegally terminated by the respondent without complying with the provisions of section 25-N of the Act.

*Issue No. 2 :*

22. For the reason recorded hereinabove while discussing issue no.1 & 3, the termination of services of petitioner *w.e.f.* 31.10.2008 by the respondent is hereby set aside. As the result, petitioner is entitled for reinstatement with seniority and continuity. However, the petitioner is not entitled to back wages as it is settled law that back wages cannot be granted mechanically when the order of termination is declared illegal. Taking into account all the facts and circumstances of the case, to my mind the petitioner is not entitled to back wages. Accordingly, this issue is decided in favour of petitioner.

*Relief :*

For the reasons recorded hereinabove, the claim petition is allowed and as such the termination of services of petitioner from 31-10-2008 by the respondent is set aside and the petitioner is ordered to be reinstated in service forthwith with seniority and continuity but without back wages and as such the reference is answered accordingly in favour of petitioner. Let a copy of

this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 26 th Day of March, 2013.

By order,  
Sd/-  
*Presiding Judge,*  
*Industrial Tribunal-cum-Labour Court, Shimla.*

**IN THE COURT OF PURENDER VAIDYA, PRESIDING JUDGE, INDUSTRIAL  
TRIBUNAL-CUM-LABOUR COURT, SHIMLA, (H. P.)**

**Ref. No. 27 of 2011**

Instituted on. 13-6-2011

Decided on 26-3-2013

Gian Singh S/o Shri Raghunath Singh R/o Village Kaukhi, P.O Narag, Tehsil Pachhad,  
District Sirmour, H. P. *..Petitioner*

*Vs*

1. The Divisional Forest Officer, Forest Division, Rajgarh, District Sirmour, H.P.

2. State of HP through its Secretary Forest Govt. of HP, Shimla *.. Respondents*

**Reference under section 10 of the Industrial**

Disputes Act, 1947.

*For petitioner :* Shri J.C Bhardwaj, AR.

*For respondents :* Shri Jagdish Kanwar, Dy. DA

**AWARD**

The following reference has been received from appropriate government for adjudication:

**“Whether the verbal termination of services of Shri Gian Singh S/o Shri Raghu Nath Singh daily wage worker by the Divisional Forest Officer, Forest Division Rajgarh, District Sirmour, H.P. w.e.f. May, 2005 without serving notice, without holding enquiry and without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, to what back wages, service benefits and relief the above named workman is entitled to?”**

2. The petitioner filed the claim petition stating that he was engaged as daily wage beldar by the respondents in December 1997. He was illegally terminated on 16/3/2004 without complying with the statutory provisions of the Industrial Dispute Act, 1947. He had completed 240 days in a calendar year. No notice was given to him prior to his termination. Thus, respondent violated the provisions of section 25-F of Industrial Dispute Act, 1947. After the termination of petitioner, respondent retained the junior workmen and also engaged fresh workmen their by

respondents also violated the provisions of section 25-G and 25-H of the Act. Hence, petitioner prayed to set aside his termination and also prayed to reinstate him with full back wages, seniority and other consequential service benefits.

2. The respondents contested the claim petition by filing a reply where in preliminary objections as to cause of action and abandonment of job by petitioner in May, 2005 were raised. On merits, respondents stated that the petitioner was engaged *w.e.f.* 1-12-97. He completed 240 days in 2001 only and he was disengaged temporarily on 16-03-2002 due non-availability of work and funds, however, he was again engaged on 04-01-2003. It was denied that the petitioner was illegally removed from service on 16-04-2004. It was stated that the petitioner left the work in May, 2005 and did not return to work. The petitioner never approached the office of respondents for his reengagement. Respondent further stated that no junior workmen were engaged or retained by the respondent as alleged by the petitioner. Hence, respondent prayed for the dismissal of the claim petition.

3. Petitioner filed rejoinder wherein he denied all the averments made by the respondent in reply and further reasserted the facts already stated by him in claim petition.

4. On the pleadings of the parties, the following issues were framed.

8. Whether the termination of the services of petitioner by the respondent *w.e.f.* May, 2005 is in violation of the provisions of Industrial Disputes Act, 1947 ? . . OPP

9. If issue no.1 is proved in affirmative to what relief the petitioner is entitled to? . . OPP

10. Whether the petition is not maintainable? . . OPR

11. Relief.

5. The aforesaid issues were read over and explained to both the parties. No other issue was pressed or claimed. Evidence of both the parties on the aforesaid issues were recorded.

6. I have heard both the parties and gone through the record carefully.

7. For the reasons to be recorded hereinafter my findings on the aforesaid issues are as under:

*Issue No.1 :* Yes.

*Issue No.2 :* Entitled for reinstatement with seniority and continuity but without back wages.

*Issue No.3 :* No.

*Relief:* Reference answered in negative against the respondent per operative part of award.

### **Reasons for finding**

*Issue No.1 :*

8. After hearing both the parties and going through the record carefully, I am of the considered opinion that the services of petitioner were wrongly and illegally terminated by the respondent in May, 2005 against the provisions of Industrial Disputes Act, 1947. Hence, his termination is not sustainable under law and liable to set aside.

9. From the pleadings as well as evidence of the parties, it is undisputed that petitioner was engaged as a daily waged workman by the respondent in December, 1997. The respondent has produced in evidence the mandays chart of petitioner Gian Singh, Ex. RW-1/A which is revealing that petitioner worked in December, 1997 for 31 days. Thereafter, the petitioner did not work in 1998 and 1999 and again worked with the respondent from March, 2001 to May 2005 with breaks. The petitioner in his claim petition has stated that he was illegally removed from service on 16-03-2004. But, when he stepped into the witness box as PW-1, then he has categorically deposed that he was removed from service on 17-5-2005. He also tendered in evidence two notices Ex. P-1 dated 16-03-2002 and Ex. P-2 dated 4-1-2003 which are revealing that he was earlier removed in 2002 and again engaged in January, 2003 by the respondent.

10. On behalf of the respondent RW-1 Shri Vipin Chander Pal, Range Officer, Narag was examined who proved the manday chart of petitioner Ex. RW-1/A. His cross-examination is reviling that petitioner has not disputed the mandays chart Ex. RW-1/A. So, taking into account the mandays chart as well as the testimony of petitioner, it is established that the petitioner worked with the respondent till 17th May, 2005. RW-1 has deposed that in May 2005, the petitioner had left the job on his own. But, this testimony of RW-1 cannot be believed because prior to May, 2005 petitioner was on the rolls of respondent, so respondent was bound to issue notice to the petitioner to resume the duty, if, he had left the job in May, 2005.

11. In light of aforesaid discussion, I am of the view that in fact petitioner was removed from the service by the respondent in May, 2005. Petitioner has stated that his removal was in violation of section 25-F of Industrial Disputes Act. For the same, petitioner was to establish that prior to 17-05-2005 when he was removed from services, he had completed 240 days in preceding calendar year. The mandays chart Ex. RW-1 is reviling that petitioner had not completed 240 days in a calendar year prior to 17-05-2005. So, there is no violation of section 25-F of Industrial Disputes Act, 1947 in which the respondent was under the legal obligation to serve one month's notice upon the petitioner or to pay wages and compensation in lieu of said notice.

12. However, at the same time I find sufficient evidence to show that the removal of petitioner is in violation of section 25-G of Industrial Disputes Act, 1947 which reads as under :—

**“Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in his behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman.”**

13. The aforesaid provision of law makes it clear that before the retrenchment of petitioner on 17-05-2005, the respondent should have retrenched junior workman to him or in another words the respondents have violated the provisions of first come last go principle. The respondent has produced in evidence the seniority list Ex. P-3 and Ex. P-4 which are revealing that petitioner was at serial No. 97 in seniority list where as there are other junior workmen namely Lal Sing etc. at serial no 98 to 104 who were engaged after the petitioner. Here, the testimony of RW-1 Shri Vipin Chander Pal is relevant who has admitted that in the year 2005, the workmen junior to petitioner continued in service. He has admitted that the names of workmen mentioned in seniority list Ex P-4, who were juniors to petitioner, were in service. This evidence established that the respondent violated the provisions of section 25-G of the Act. Consequently, the termination of petitioner in May, 2005 is not sustainable under law. It is also admitted by RW-1 in his cross-examination that before terminating the petitioner from service, no enquiry was conducted against him. Hon'ble High Court of H.P in the matter of State of H.P and others Vs. Bhatag Ram and Another HLJ 2007 (HP) 903 has held as under:



**“Continuing of 240 days not necessary in 12 calendar months. It is not necessary to workman to complete 240 days during 12 months for taking the benefits of section 25-G & 25-H of the Act.”**

14. Thus, for the aforesaid reasons the termination of petitioner in May, 2005 is in violation of the provisions of Industrial Disputes Act, 1947. Accordingly, this issue is decided in favour of petitioner and against the respondent.

*Issue No. 2 :*

15. For the reason recorded hereinabove while deciding issue no.1, the termination of services of petitioner in May, 2005 by the respondent is hereby set aside and as such the petitioner is entitled to be reinstated in service with seniority and continuity. However, the petitioner is not entitled to back wages as it is settled law that back wages cannot be granted mechanically when the order of termination is declared illegal. Taking into account all the facts and circumstances of the case, to my mind the petitioner is not entitled to back wages. Accordingly, this issue is decided in favour of petitioner.

*Issue No. 3 :*

16. From the careful perusal of the record, there is nothing to suggest that present petition is not maintainable. Hence, this issue is decided against the respondent.

*Relief:*

For the reasons recorded hereinabove, the claim of the petitioner is allowed and as such the termination of services of petitioner *w.e.f.* May, 2005 by the respondents is set aside and the petitioner is ordered to be reinstated in service with seniority and continuity but without back wages and the reference is answered in negative. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 26th day of March, 2013.

By order,  
Sd/-  
Presiding Judge,  
Industrial Tribunal-cum-Labour Court, Shimla.

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**IN THE COURT OF PURENDER VAIDYA, PRESIDING JUDGE, INDUSTRIAL  
TRIBUNALCUM-LABOUR COURT, SHIMLA, (H.P)**

**Ref. No. 2 of 2008**

Instituted on. 17-1-2008  
Decided on 30-3-2013

Madan Lal S/o late Shri Ganga Ram R/o Quarter No. 37-A (3-4-A). The Lawrence School,  
Snawar, Tehsil Kasauli, District Solan, H. P. . .Petitioner

*VS*

The Headmaster, Lawrence School, Snawar Tehsil Kasauli, District Solan, H. P.

. . Respondent

### Reference under section 10 of the Industrial Disputes Act, 1947

*For petitioner :* Shri J.C Bhardwaj, AR.

*For respondent :* Shri V.K Gupta, AR.

### AWARD

The following reference has been received from appropriate government for adjudication:

**“Whether the dismissal of services of Shri Madan Lal (Cook) S/o late Shri Ganga Ram by the Headmaster (Officiating) of the Lawrence School Sanwara, Tehsil Kasauli, District Solan, H .P. after conducting domestic enquiry *w.e.f.* 22-12-2003 is legal and justified? If not, what relief of back wages, seniority and amount of compensation the aggrieved workman is entitled to?”**

2. The petitioner filed the claim petition stating that he was engaged as helper by the respondent for the first time on 3-8-1981 and thereafter, he was promoted as Bearer on 1-1-1987 on probation of two years. After successfully completing the probation period, the petitioner was confirmed on 1-1-1989. He was again promoted to the post of Cook *w.e.f.* 1-8-1998 and his salary was also increased. However, the petitioner was illegally dismissed by the respondent on 22-12-2003 that too during the pendency of reference no. 243 /2001 which was pending before this Court. Hence, petitioner challenged his dismissal violative of section 33-1 (a&b) of the Industrial Disputes Act, 1947. In fact, the Headmaster of Lawrence School, Snawar is not competent authority to dismiss the services of petitioner. NO proper enquiry was conducted against the petitioner. The allegation of alleged forgery by the petitioner was false and entire enquiry was biased. The enquiry officer did not properly appreciate the evidence. The petitioner further stated that he was General Secretary of the workmen association, so he was a protected workman and could not be dismissed. The enquiry officer did not appreciate the judgment of JMIC, Patiala wherein it was held that the Children of petitioner were school going. So, the petitioner did not commit any misconduct by withdrawing the education allowances for the study of his children. Consequently, petitioner prayed to set aside his dismissal and also prayed to reinstate him with full back wages and other service consequential benefits. However, in alternate, petitioner prayed to set aside the punishment of dismissal being disproportionate and excessive to his misconduct. So, he prayed to set aside the dismissal and impose a lesser punishment.

3. The respondent contested the claim petition by filing a reply wherein preliminary objection as to maintainability was taken. On merits, respondent did not dispute that the petitioner was employed by the respondent and he was given promotions in due course of time. However, respondent stated that the petitioner was chargesheeted for fraud, dishonesty, submission of forged documents and making of false declaration to gain monetary benefits by misleading the school authorities. Pursuant to chargesheet dated 8.11.2000, a regular and legal enquiry against the petitioner was held wherein he was held guilty. Consequently, his services were terminated vide order dated 23.12.2003. However, a general reference was pending before this Court, so, the respondent applied for the approval of the Court as required under section 33-2 (b) of the Industrial Disputes Act, 1947 and the approval was granted on 13-1-2006 by this Court. The petitioner challenged the matter before the Hon'ble High Court and the plea of petitioner was dismissed by Hon'ble High Court on 9-3-2007. Respondent further stated that full opportunity was given to the petitioner to cross-examine the witnesses of the management and to produce his witnesses. The enquiry officer was not biased and a fair enquiry was conducted. The respondent also stated that the

petitioner was not a protected workman. Hence, prayer was made to dismiss the claim petition of petitioner.

4. Petitioner filed rejoinder wherein he denied all the averments made by the respondent in reply and further reasserted the facts already stated by him in claim petition 5. On the pleadings of the parties, the following issues were framed:—

1. Whether the dismissal of services of petitioner by the respondent after conducting domestic enquiry w.e.f. 22.12.2003 is illegal & unjustified as alleged? . . OPP
2. If issue no.1 is proved to what relief of back wages, seniority and amount of compensation the petitioner is entitled to? . . OPP
3. Whether the respondent was not an employer of petitioner? If so, its effect? . . OPR
4. Whether the school is not an industry? . . OPR
5. Relief.

6. The aforesaid issues were read over and explained to both the parties. No other issue was pressed or claimed. Evidence of both the parties on the aforesaid issues were recorded.

7. I have heard both the parties and gone through the record carefully.

8. For the reasons to be recorded hereinafter my findings on the aforesaid issues are as under:

*Issue No.1 :* Partly yes.

*Issue No. 2 :* Entitled to reinstatement in service with seniority and continuity but without back wages by stopping two increments.

*Issue No.3 :* No.

*Issue No. 4 :* Not pressed.

*Relief :* Reference answered in negative as the penalty imposed upon the petitioner is too harsh per operative part of award.

### **Reasons for finding**

*Issue No.1 & 3 :*

9. Both these issues are interconnected and can be disposed of by a single finding.

10. From the pleadings of the parties, it is undisputed that the petitioner was employed by the respondent initially as a helper cook and thereafter he was promoted to the post of Bearer on probation and finally to the post of cook. The petitioner was dismissed from the post of cook on 22-12-2003. It is also not in dispute that respondent used to pay salary to the petitioner, hence, there was a relationship of employee and employer between the parties.

11. Parties are not in dispute that the services of petitioner were terminated on 22-12-2003 vide letter Ex/ P-30. This dismissal order was issued in pursuance of the enquiry which was

conducted against the petitioner. The record is revealing that the petitioner was chargesheeted *vide* chargesheet Ex. P-19 dated 8-11-2000 for the allegation of fraud, dishonesty, submission of forged documents and for making false declaration to gain monetary benefits by misleading the school authorities.

12. The record is also revealing that the petitioner being the employee of respondent had withdrawn the education allowance for the study of his children but petitioner submitted forged certificates in respect of his children that they were studding in Sarswati Niketan School, Nalwa whereas it was found that the certificate in respect of his children furnished by the petitioner was forged one.

13. On behalf of petitioner Shri S.K Kaushal, Labour Officer, Solan stepped into the witness box as PW-1 and he deposed that he received demand notice Ex. P/A1 from the petitioner side and first reconciliation was effected on 19-11-2005 *vide* Ex. P/A2. The reconciliation failed and reference was sent to the Court *vide* Ex. P/A3. In his cross-examination, he has stated that prior to 27-10-2005 no dispute regarding the petitioner was pending.

14. Petitioner Madan Lal stepped into the witness box as PW-2 and deposed that he was appointed on 1.1.1987 by the respondent *vide* letter Ex. P-2 and subsequently confirmed on 1.1.1989 *vide* letter Ex. P-3. His pay scale was revised and increments were also increased *vide* orders Ex. P-4, Ex. P-5 and Ex. P-6. He also tendered in evidence his promotions orders Ex. P-9, Ex. P-10 and Ex. P-11. He further stated that he was served with a chargesheet Ex. P-19 by the respondent and he filed the reply Ex. P-20 to the said chargesheet. Thereafter, he received show cause notice Ex. P-21 dated 18.6.2001 and replied the same *vide* Ex. P-22. The list of witnesses was given during enquiry proceedings which is Ex. P-23. His statement Ex. P-24 was also recorded during enquiry proceedings. He was served a 2<sup>nd</sup> show cause notice Ex. P-26 and filed his reply Ex. P-27. Another show cause notice Ex. P-28 was received by him and he replied the same *vide* Ex. P-29. Consequently, he was dismissed from service *vide* order Ex. p-30. After dismissal, he raised demand notice Ex. PA-1 and when reconciliation failed before conciliation officer, his dispute was referred to this Court.

15. The petitioner was cross-examined at length by respondent. His cross-examination is revealing that after receiving chargesheet he was given due opportunity of being heard by the respondent and he was duly associated during enquiry. He was afforded opportunity to lead evidence. He was supplied with the list of witnesses and documents. Therefore, there is nothing in the testimony of petitioner to reveal that he was condemned unheard by the respondent or his dismissal orders were the result of victimization or unfair labour practice. I do not find violation of principles of natural justice during the entire enquiry against the petitioner.

16. On behalf of respondent the documents Ex. R-1 to Ex. R-62 were filed in evidence. These documents are revealing that the petitioner was appointed by the respondent and he was chargesheeted and a legal and fair enquiry was conducted against him wherein due opportunity of being heard was afforded to the petitioner and in the light of evidence of the parties, enquiry officer held the petitioner guilty and consequently the petitioner was dismissed from service.

17. I have also carefully gone through the evidence appreciated by the enquiry officer during enquiry. The petitioner submitted the certificate that his children were studding in Sarswati Niketan School, Nalwa but the clerk from the said school as well as Principal have categorically deposed that none of the children of petitioner were studding in their school. Therefore, the certificate furnished by the petitioner was not genuine and it was a false document. Hence, the enquiry officer has held that the certificate submitted by the petitioner was forged and on the basis of said forged certificate the petitioner had withdrawn the monitory benefits of education allowance for his children.

18. The record is also revealing that in view of pendency of reference no. 243/2001 the respondent had applied for the approval of this Court under section 33-2(b) of the Act which was granted to the respondent by this Court *vide* order dated 13-1-2006. The record is revealing that the petitioner challenged said order before Hon'ble High Court *vide* CWP No. 126 of 2006 which was dismissed *vide* order Ex. R-62 dated 9-3-2006. That means the approval granted by this Court under section 33-2(b) of Industrial Disputes Act, 1947 was upheld by the Hon'ble High Court.

19. Hence, in the light of my aforesaid discussion, I find sufficient evidence to establish that in fact the petitioner was chargesheeted and a fair and legal enquiry was conducted against him wherein he was found guilty for fraud, dishonesty, submission of forged documents and making of false declaration and misleading the school authorities as the result, he was dismissed from service.

20. The petitioner has raised an objection that he was a protected workman so, no approval against him under section 33-2(b) of Industrial Disputes Act, 1947 could be granted by this Court. This plea of petitioner was rejected by the Hon'ble High Court as is evident from the order Ex. R-62.

21. On behalf of petitioner a prayer was made to take lenient view against him and set aside the order of dismissal by invoking section 11-A of the Industrial Disputes Act, 1947 which reads as under:

**“Powers of Labour Courts, Tribunals and National Tribunals to give appropriate relief in case of discharge or dismissal of workmen.—**Where an industrial dispute relating to the discharge or dismissal of a workman has been referred to a Labour Court, Tribunal or National Tribunal for adjudication and, in the course of the adjudication proceedings, the Labour Court, Tribunal or National Tribunal, as the case may be, is satisfied that the order of discharge or dismissal was not justified, it may, by its award, set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions, if any, as it thinks fit, or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require:

Provided that in any proceeding under this section the Labour Court, Tribunal or National Tribunal, as the case may be, shall rely only on the materials on record and shall not take any fresh evidence in relation to the matter.”

22. The aforesaid statutory provision of law has given power to this Court to set aside the order of dismissal keeping in view the facts of the case, if the order of dismissal is not justified.

23. No doubt, the enquiry report has gone against the petitioner and he was found guilty of furnishing false certificate regarding the study of his children. However, at the same time, I am of the opinion that the petitioner was otherwise entitled to the education allowance for his children even if he had had not furnished the aforesaid false certificate. Because it is undisputed fact that as per rules of the respondent school the education allowance was available to every workman upto three children who are studying in school other than the respondent school from Class-I to Class-12. It has come in evidence before enquiry officer that three children of petitioner were of the age of seven, ten and twelve years respectively. So, it can be safely concluded that all of them were school going.

24. The relevant Rule No. 367 of Lawrence School Orders deals with the provision of education allowance and it reads as under:

“1. As per existing School Rules Education allowance is admissible for up to three children only who are studying in schools other than the Lawrence School, Sanawar in class I to XII.”

25. The aforesaid Rule does not make it obligatory upon the employee of the School to furnish certificate from the concerned school where his children are studding, in order to avail the facility of education allowance. There is nothing in the Rule that only on furnishing the certificate qua the children that they are studding in school, the employee would get the education allowance. I am of the opinion that employee is entitled to the education allowance if his children are studding in any school other than the Lawrence School in class I to XII and this facility is admissible upto three children only. That is why I am of the considered opinion that by furnishing the disputed certificate qua his children by the petitioner, he did not make himself eligible for the education allowance. The furnishing of school certificate is not the pre-requisite condition of the education allowance. The school authorities could have satisfied itself by any other means about the genuineness of entitlement of education allowance of an employee. It could be a mere declaration by the employee if the school authorities consider the same to be correct and genuine.

26. The evidence led during enquiry on record is also revealing that the wife of petitioner along-with his children had filed a petition under section 125 of Cr. P.C against the petitioner for the grant of maintenance before the Court of Ld. Judicial Magistrate, Patiala which was decided vide order Ex. P-25 and the maintenance was awarded to the wife and children of petitioner wherein it was held that the children of petitioner must be studding in a school. Therefore, Ld. Magistrate awarded maintenance keeping in view the requirement of children of petitioner for their study.

27. So, it appears to me that the punishment of dismissal inflicted upon the petitioner is too harsh and not in consonance with the misconduct committed by him. Since, the petitioner was otherwise entitled for education allowance for his three children as per rules of the respondent school, therefore, strictly speaking that the petitioner did not avail the facility of education allowance only on the basis of forged certificate which he had submitted to the school authorities in respect of his children.

28. Accordingly, for the aforesaid reasons the order of dismissal is not justified and not in consonance with the misconduct of the petitioner. Therefore, I am in agreement with the request advanced by Ld. AR for petitioner for lesser punishment.

29. Consequently, for the aforesaid reasons issue No.1 is partly decided in favour of the petitioner and issue no.3 is decided against the respondent.

*Issue No. 2 :*

30. For the reason to be recorded hereinabove while deciding issue no.1 & 3, the dismissal orders of petitioner dated 22.12.2003 is hereby set aside. However, penalty of stoppage of two increments with cumulative effect is hereby imposed upon the petitioner and he is ordered to be reinstated in service forthwith with seniority and continuity. However, the petitioner is not entitled to back wages as it is settled law that back wages cannot be granted mechanically when the order of termination is declared illegal. Taking into account all the facts and circumstances of the case, to my mind the petitioner is not entitled to back wages. Accordingly, this issue is answered in favour of petitioner.

*Issue No. 4 :*

31. During the course of arguments, this issue is not pressed, hence, decided against the respondent.

*Relief :*

For the reasons recorded hereinabove, the claim of the petitioner is allowed to the effect that the dismissal order of petitioner from service *w.e.f.* 22-12-2003 by the respondent is set aside and the petitioner is ordered to be reinstatement in service with immediate effect with seniority and continuity but without back wages. However, the penalty of stoppage of two increments with cumulative effect is hereby imposed upon the petitioner and as such the reference is decided accordingly. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 30 th Day of March, 2013.

By order,  
Sd/-  
*Presiding Judge,*  
*Industrial Tribunal-cum-Labour Court, Shimla.*

**IN THE COURT OF PURENDER VAIDYA, PRESIDING JUDGE, INDUSTRIAL  
TRIBUNALCUM-LABOUR COURT, SHIMLA, (H.P)**

**Ref. No. 91 of 2009**

Instituted on. 18-11-2009  
Decided on 26-3-2013

Nisha Thakur W/o Shri Moti Singh Thakur R/o Shivam Cottage behind HFCL Chambaghat,  
Tehsil & District Solan, H. P. . . *Petitioner*

*Vs*

M/s Himachal Futuristic Communication, Ltd., (Wire-Line/Wire Less Division)  
Chambaghat, District Solan, H. P. . . *Respondent*

**Reference under section 10 of the Industrial Disputes Act, 1947**

*For petitioner :* Shri J.C Bhardwaj, AR.  
*For respondent :* Shri Rahul Mahajan, Advocate.

**AWARD**

The following reference has been received from appropriate government for adjudication:

**“Whether termination of the services of Smt. Nisha Thakur W/o Shri Moti Singh *w.e.f.* 16-9-2008 by the management of M/s Himachal Futuristic Communication Ltd. (Wire Line/ Wire Less Division) Chambaghat, District Solan, H. P. without serving any chargesheet and without holding any enquiry and without complying with the section 25-N of the Industrial Disputes Act, 1947 is legal and justified? If not, to what back wages, seniority service benefits and relief the above aggrieved is entitled to?”**

2. The petitioner filed the claim petition stating that she was appointed as Technician by the respondent on 15-2-1990 on daily wages and she joined her duties on 21-2-1990 and remained on probation for twelve months and after successfully completing her probation period she was confirmed on 22-2-1991. The respondent illegally terminated her services on 16-9-2008 without any

enquiry or any notice. The petitioner stated that she was a skilled workman and the General Manager was not competent authority to terminate her services. Petitioner completed nineteen years of service with full devotion but no reason was assigned when she was terminated. In fact, the termination of petitioner was the result of a conspiracy at the instance of one junior workman Balwant Singh and one Sarita Guleria. The petitioner along-with other workers raised voice against the wrong doing of Balwant Singh and his wife Sarita. Both of them connived with the respondent management and levelled false allegations of abusing and misbehavior of petitioner. The petitioner had filed a complaint of harassment, at work place, against Balwant Singh. The management did not investigate said complaint and no opportunity of being heard was given to the petitioner. Before terminating the services of petitioner, respondent management was required to serve three month's notice on the petitioner as required under section 25-N of Industrial Disputes Act, 1947 but no such notice was served, hence, the termination of petitioner was bad in the eyes of law. The respondent also committed breach of section 25-G and 25-H of Industrial Disputes Act as they retained junior persons like Balwant and other persons after terminating the petitioner. Hence, petitioner prayed to set aside her termination orders dated 16-9-2008 and also prayed that she be reinstated in service with full back wages, seniority, continuity along-with other consequential benefits.

3. The respondent contested the claim petition by filing a reply wherein it was not disputed that the petitioner was employed by the respondent. It was stated that in the appointment letter of petitioner it was clearly mentioned that her services could be terminated by serving one months notice and said clause was subsequently amended and three month's notice was added in the said clause. The services of petitioner were terminated *w.e.f.* 31-10-2008 *vide* letter dated 1-8-2008. Thereafter, respondent *vide* letter dated 15-9-2008 dispensed with the remaining period of notice and services of petitioner were terminated *w.e.f.* 16-9-2008 and a cheque of ₹ 15,750/- for remaining notice period was also sent to the petitioner. The respondent stated that the petitioner was not a workman as she was Senior Engineer and various employees were working under her. She was discharging the supervisory functions and she was governed by the Executive Conduct Discipline and Appeal Rules. As such petitioner did not fall within the definition of workman under section 2(s) of the Industrial Disputes Act, 1947. The conduct of petitioner was not good as earlier several warnings were issued to her. She was also served show cause notice and chargesheets. However, petitioner had tendered apology. *Vide* letter dated 1-8-2008, petitioner was clearly informed that there was no manufacturing activity in the plant, so no work was expected in near future and for the aforesaid reason, her services were terminated. Respondent denied that the services of petitioner were terminated at the instance of Balwant Singh and Sarita Guleria. It was also denied that the management had taken side with Balwant Singh and Sarita Guleria. The other allegations of petitioner were also categorically denied. It was stated that after her termination the petitioner was gainfully employed. The respondent also denied that violation of section 25-G and 25-H of Industrial Disputes Act, 1947. Consequently, respondent prayed for the dismissal of the petition.

4. Petitioner filed rejoinder wherein she denied all the averments made by the respondent in reply and further reasserted the facts already stated by her in claim petition 5. On the pleadings of the parties, the following issues were framed:—

12. Whether the termination of the services of petitioner by the respondent management without serving any chargesheet and without holding any enquiry and without complying with section 25-N of the Industrial Disputes Act, 1947 is illegal and unjustified as alleged ?  
.. OPP
13. If issue No.1 is proved in affirmative to what service benefits the petitioner is entitled to?  
.. OPP



14. Whether the petition is not maintainable in view of the preliminary objections No. 1 and 3 as alleged? . . . OPR

15. Relief.

6. The aforesaid issues were read over and explained to both the parties. No other issue was pressed or claimed. Evidence of both the parties on the aforesaid issues were recorded.

7. I have heard both the parties and gone through the record carefully.

8. For the reasons to be recorded hereinafter my findings on the aforesaid issues are as under:

*Issue No.1 :* Yes.

*Issue No.2 :* Entitled for reinstatement with seniority and continuity but without back wages.

*Issue No. 3 :* No.

*Relief :* Reference answered in negative against the respondent per operative part of award.

### Reasons for finding

*Issue No.1 & 3 :*

9. Both these issues are interconnected and can be disposed of by a single finding.

10. After hearing both the parties and going through the record carefully, I am of the considered opinion that petitioner falls within the definition of workman as defined under section 2(s) of Industrial Disputes Act, 1947 and petitioner has also established that her services were wrongly and illegally terminated by the respondent without complying with the provisions of Industrial Disputes Act, 1947.

11. Section 2(s) of Industrial Disputes Act, 1947 reads as under:

**“workman” means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person—**

- (i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or
- (ii) who is employed in the police service or as an officer or other employee of a prison; or
- (iii) who is employed mainly in a managerial or administrative capacity; or
- (iv) who, being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.

12. Thus, from the aforesaid provision of law, it is clear that a person who is employed in Supervisory capacity will not be treated as a workman. The respondent has taken the plea that

petitioner was a senior Engineer and she was discharging supervisory function, so, she was not a workman. It is undisputed that petitioner was initially appointed as a technician in 1990 and subsequently she was promoted to Engineer. The respondent has placed on record copy of Executive Conduct Discipline and Appeal Rules mark A. As per section 2 (c) of said Rules, "Executive" means an employee of company in the scale (3250-500) and above. The word executives and officers are interchangeably used. They are in managerial or supervisory cadre. Officers/ Executives are authorized to take decisions and correspond, with outside agencies independently. Depending upon nature of duties executives may or may not have subordinate staff under them.

13. No doubt, as per aforesaid rule, it is not required that the executive must have subordinate staff under him but keeping in view the plea of respondent, it appears that respondent has alleged that petitioner was having subordinate staff under her. The petitioner in her testimony as PW-1 has categorically deposed that no workman was working under her and she was not discharging any administrative or managerial functions. In her cross-examination, she had denied that she had been doing supervisory and managerial function. She has also denied that she was governed by the Executive Conduct Discipline and Appeal Rules.

14. On behalf of respondent RW-1 Shri M.S Gupta, the General Manager of the company has given a general statement that the petitioner was discharging the duties of senior Engineer. But in his cross-examination, he has stated that he does not have any record to show that any other person was working under the petitioner. He has stated that petitioner used to issue verbal instructions to the workers/technicians who were working under her. But respondent did not examine any such technicians or workmen who were working under the petitioner. RW-1 has also stated that petitioner used to sanction short leave and used to forward leave application to the authority but again no such leave application was produced in evidence. RW-1 has further stated that petitioner was not authorized to issue any show cause notice to any workman.

15. Hence, taking into account all the aforesaid evidence on record, I am of the considered opinion that petitioner was not discharging supervisory or managerial function and as such she was working under the respondent as a workman as defined under section 2(s) of the Industrial Disputes Act, 1947.

16. On behalf of respondent it was argued that the service condition of petitioner would be governed by conditions laid down in her appointment letter Ex. P-2. After due consideration, I am not in agreement with the aforesaid submission for the reasons discussed hereinabove. The petitioner is a workman under section 2(s) of Industrial Disputes Act, 1947, therefore, she would be governed by the statutory provisions of Industrial Disputes Act, 1947 while adjudicating upon her termination. Therefore, the conditions laid down in appointment letter Ex. P-2 would not be seen but the statutory provisions of Industrial Disputes Act, 1947 would be relevant.

17. The petitioner has categorically deposed that when she was terminated from service at that time more than three hundred workmen were working with the respondent. The respondent has not disputed this fact. Therefore, section 25-N of Industrial Disputes Act, 1947 is relevant which lays down the conditions precedent to retrenchment of workman, it reads as under:

**"Conditions precedent to retrenchment of workmen.—**(1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,—

- (c) the workman has been given three months' notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and

- (d) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf”.

18. Under the aforesaid provision of law, respondent was under the legal obligation to serve three month's notice in writing upon the petitioner before terminating her services. It is undisputed that the petitioner was appointed as a technician vide appointment letter Ex. P-1 dated 5.2.1990 and the conditions of appointment were written in letter Ex. P-2 dated 14-8-1990. Since, the petitioner is a workman under the Industrial Disputes Act, 1947, therefore, before terminating her services, respondent was to comply with the statutory provisions of the Act and as per section 25-N, respondent was required to serve three month's notice upon the petitioner.

19. Ex. P-21 is the notice dated 1-8-2008 served upon the petitioner by the respondent *vide* which her services were terminated *w.e.f.* 31-10-2008. However, subsequently vide another notice Ex. P-4 dated 15-9-2008, the services of petitioner were terminated *w.e.f.* 16.9.2008 after lapse of 1 ½ months of earlier notice and it is stated in the Ex. p-4 that for the remaining period of 1 ½ months, the cheque amounting to ₹ 15,700/- was also sent to the petitioner. Therefore, it stands established on record that respondent did not wait for the lapse of three months and proceeded to terminate the services of petitioner *w.e.f.* 16-9-2008. This has also been categorically deposed by the petitioner that respondent did not wait for three months and prior to that her services were terminated on 15-9-2008.

20. Since, respondent did not wait for the lapse of statutory period of three months, therefore, to my mind the termination of services of petitioner *w.e.f.* 16-9-2008 is illegal. There is nothing in section 25-N of the Act that part period of said notice can be waived off by the respondent. If respondent intended to waive off the three month's period then the respondent should have paid wages of three month's to the petitioner in lieu of such notice.

21. Also under section 25-N (1)(b) the respondent was required to seek prior permission of the appropriate government or such authority as may be specified by the Government by notification by making an application in this behalf before terminating the services of petitioner. In this case, no such permission has been brought in evidence by the respondent. For the same respondent was required to file an application as section 25-N (2) says that an application for permission under sub section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workman concerned in the prescribed manner. There is nothing in evidence to suggest that respondent has complied with the aforesaid provisions of law. I do not find any evidence to show that respondent has obtained the permission from the appropriate government by making an application and the application was also served upon the petitioner. In the absence of compliance of provisions of section 25-N of the Act, the termination of petitioner is illegal and unjustified and liable to set aside.

22. In the notice Ex. P-4, respondent has alleged that Balwant Singh (employee) had filed a complaint against the petitioner for threatening and abusing him. Had there been any truth and genuineness in the said allegation, the respondent would have served show cause notice to the petitioner qua the said complaint and would have initiated enquiry against the petitioner. But regarding the alleged complaint of Balwant Singh no enquiry was conducted against the petitioner. Therefore, the action of respondent in believing the allegation of Balwant Singh to be true without affording any opportunity of being heard to the petitioner is not sustainable under law. Moreover, respondent did not examine Shri Balwant Singh as a witness.

23. On behalf of petitioner arguments were advanced that her termination was also against the provisions of sections 25-G and 25-H of the Industrial Disputes Act, 1947. No doubt, the

petitioner has filed the claim petition in support of said plea. But this Court is to answer the reference and I am of the view that the claim petition must be in consonance with the scope of reference. The reference is specifically qua the illegality of termination of services of petitioner in violation of section 25-N of Industrial Disputes Act, 1947. There is no reference that services of petitioner were terminated in violation of sections 25-G and 25-H of the Industrial Disputes Act, 1947. As the result, the claim filed by the petitioner pleading the violation of sections 25-G and 25-H of Industrial Disputes Act, 1947 is beyond the scope of reference. Consequently, the same cannot be discussed and no finding can be given by this Court regarding the alleged violation of section 25-G and 25-H of Act on the part of respondent.

24. Accordingly, for the aforesaid reasons issue no.1 is answered in favour of petitioner whereas issue no.3 is answered against the respondent as petition is maintainable because the petitioner is a workman under section 2(s) of the Industrial Disputes Act, 1947 and it stands proved that her services were wrongly and illegally terminated by the respondent without complying with the provisions of section 25-N of the Act.

*Issue No. 2 :*

25. For the reason recorded hereinabove while discussing issue No.1 & 3, the termination of services of petitioner *w.e.f.* 16-9-2008 by the respondent is hereby set aside. As the result, petitioner is entitled for reinstatement with seniority and continuity. However, the petitioner is not entitled to back wages as it is settled law that back wages cannot be granted mechanically when the order of termination is declared illegal. Taking into account all the facts and circumstances of the case, to my mind the petitioner is not entitled to back wages. Accordingly, this issue is decided in favour of petitioner.

*Relief:*

For the reasons recorded hereinabove, the claim petition is allowed and as such the termination of services of petitioner from 16-9-2008 by the respondent is set aside and the petitioner is ordered to be reinstated in service forthwith with seniority and continuity but without back wages and as such the reference is answered accordingly in favour of petitioner. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 26 th Day of March, 2013.

By order,  
Sd/-  
*Presiding Judge,*  
*Industrial Tribunal-cum-Labour Court, Shimla.*

**IN THE COURT OF PURENDER VAIDYA, PRESIDING JUDGE, INDUSTRIAL  
TRIBUNALCUM-LABOUR COURT, SHIMLA, (H.P.)**

**Ref. No. 93 of 2009**

Instituted on. 18-11-2009

Decided on 26-3-2013

Rajnesh Bala W/o ShriBalbir Singh R/o Village Bawa, P.O Basal, Tehsil & District Solan,  
H. P. . . *Petitioner*

*Vs*

M/s Himachal Futuristic Communication, Ltd., (Wire-Line/Wire Less Division)  
Chambaghat, District Solan, H. P. . . Respondent

### Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri J.C Bhardwaj, AR.  
For respondent : Shri Rahul Mahajan, Advocate.

### AWARD

The following reference has been received from appropriate government for adjudication:

**“Whether termination of the services of Smt. Rajnesh Bala W/o Shri Balbir Singh w.e.f. 31-10-2008 by the management of M/s Himachal Futuristic Communication Ltd. (Wire Line/ Wire Less Division) Chambaghat, District Solan, H.P without serving any chargesheet and without holding any enquiry and without complying with the section 25-N of the Industrial Disputes Act, 1947 is legal and justified? If not, to what back wages, seniority service benefits and relief the above aggrieved is entitled to?”**

2. The petitioner filed the claim petition stating that she was appointed as Technician by the respondent on 1.10.1991 and as such joined her duties and thereafter she remained on probation for two years and after successfully completing her probation period she was confirmed as Senior Technician on 1-9-1993. The respondent illegally terminated her services on 31-10-2008 without any enquiry or any notice. The petitioner stated that she was a skilled workman and the Vice President (works) was not competent authority to terminate her services. Petitioner completed seventeen years of service with full devotion but no reason was assigned when she was terminated. In fact, the termination of petitioner was the result of a conspiracy at the instance of one workman Balwant Singh. The petitioner along-with other workers raised voice against the wrong doing of Balwant Singh who connived with the respondent management and as such the petitioner was made victim raising voice against Shri Balwant Singh. The respondent management without conducting any enquiry against the petitioner, terminated her services by declaring the petitioner as surplus employee of the company and no opportunity of being heard was given to the petitioner. Before terminating the services of petitioner, respondent management served three month's notice upon the petitioner but never paid any retrenchment compensation as per the statutory requirement and conditions of section 25-N of Industrial Disputes Act, 1947, hence, the termination of petitioner was bad in the eyes of law. The respondent also committed breach of section 25-G and 25-H of Industrial Disputes Act as they retained junior persons after terminating the petitioner. Hence, petitioner prayed to set aside her termination orders dated 31.10.2008 and also prayed that she be reinstated in service with full back wages, seniority, continuity along-with other consequential benefits.

3. The respondent contested the claim petition by filing a reply wherein it was not disputed that the petitioner was employed by the respondent. It was stated that in the appointment letter of petitioner it was clearly mentioned that her services could be terminated by serving one months notice and said clause was subsequently amended and three month's notice was added in the said clause. The services of petitioner were terminated w.e.f. 31-10-2008 vide letter dated 1-8-2008. The respondent stated that the petitioner was not a workman as she was Assistant Manager and various employees were working under her. She was discharging the supervisory functions and she was governed by the Executive Conduct Discipline and Appeal Rules. As such petitioner did not fall within the definition of workman under section 2(s) of the Industrial Disputes Act, 1947. Vide letter dated 1.8.2008, petitioner was clearly informed that there was no manufacturing activity in the plant, so no work was expected in near future and for the aforesaid

reason, her services were terminated. Respondent denied that the services of petitioner were terminated at the instance of Balwant Singh. It was also denied that the management had taken side with Balwant Singh. The other allegations of petitioner were also categorically denied. It was stated that after her termination the petitioner was gainfully employed. The respondent also denied that violation of section 25-G and 25-H of Industrial Disputes Act, 1947. Consequently, respondent prayed for the dismissal of the petition.

4. Petitioner filed rejoinder wherein she denied all the averments made by the respondent in reply and further reasserted the facts already stated by her in claim petition 5. On the pleadings of the parties, the following issues were framed:—

16. Whether the termination of the services of petitioner by the respondent management without serving any chargesheet and without holding any enquiry and without complying with section 25-N of the Industrial Disputes Act, 1947 is illegal and unjustified as alleged ? . . . OPP
17. If issue No.1 is proved in affirmative to what service benefits the petitioner is entitled to? . . . OPP
18. Whether the petition is not maintainable in view of the preliminary objections No. 1 and 3 as alleged? . . . OPR
19. Relief.

6. The aforesaid issues were read over and explained to both the parties. No other issue was pressed or claimed. Evidence of both the parties on the aforesaid issues were recorded.

7. I have heard both the parties and gone through the record carefully.

8. For the reasons to be recorded hereinafter my findings on the aforesaid issues are as under:

*Issue No.1 :* Yes.

*Issue No .2 :* Entitled for reinstatement with seniority and continuity but without back wages.

*Issue No. 3 :* No.

*Relief:* Reference answered in negative against the respondent per operative part of award.

### **Reasons for finding**

*Issue No.1 & 3 :*

9. Both these issues are interconnected and can be disposed of by a single finding.

10. After hearing both the parties and going through the record carefully, I am of the considered opinion that petitioner falls within the definition of workman as defined under section 2(s) of Industrial Disputes Act, 1947 and petitioner has also established that her services were wrongly and illegally terminated by the respondent without complying with the provisions of Industrial Disputes Act, 1947.

11. Section 2(s) of Industrial Disputes Act, 1947 reads as under:

**“workman” means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person—**

- (i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or
- (ii) who is employed in the police service or as an officer or other employee of a prison; or
- (iii) who is employed mainly in a managerial or administrative capacity; or
- (iv) who, being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.

12. Thus, from the aforesaid provision of law, it is clear that a person who is employed in Supervisory capacity will not be treated as a workman. The respondent has taken the plea that petitioner was working as Assistant Manager and she was discharging supervisory function, so, she was not a workman. It is undisputed that petitioner was initially appointed as a technician in 1991 and subsequently she was promoted to Assistant Manager. The respondent has placed on record copy of Executive Conduct Discipline and Appeal Rules Ex. RA-3. As per section 2 (c) of said Rules, “Executive” means an employee of company in the scale (3250-500) and above. The word executives and officers are interchangeably used. They are in managerial or supervisory cadre. Officers/ Executives are authorized to take decisions and correspond, with outside agencies independently. Depending upon nature of duties executives may or may not have subordinate staff under them.

13. No doubt, as per aforesaid rule, it is not required that the executive must have subordinate staff under him but keeping in view the plea of respondent, it appears that respondent has alleged that petitioner was having subordinate staff under her. The petitioner in her testimony as PW-1 has categorically deposed that no workman was working under her and she was not discharging any administrative or managerial functions. In her cross-examination, she had denied that she had been doing supervisory and managerial function. She has also denied that she was governed by the Executive Conduct Discipline and Appeal Rules.

14. On behalf of respondent RW-1 Shri M.S Gupta, the General Manager of the company has given a general statement that the petitioner was discharging the duties of Assistant Manager. But in his cross-examination, he has stated that he does not have any record to show that any other person was working under the petitioner. He has stated that petitioner used to issue verbal instructions to the workers/technicians who were working under her. But respondent did not examine any such technicians or workmen who were working under the petitioner. RW-1 has also stated that petitioner used to sanction short leave and used to forward leave application to the authority but again no such leave application was produced in evidence. RW-1 has further stated that petitioner was not authorized to issue any show cause notice to any workman.

15. Hence, taking into account all the aforesaid evidence on record, I am of the considered opinion that petitioner was not discharging supervisory or managerial function and as such she was

working under the respondent as a workman as defined under section 2(s) of the Industrial Disputes Act, 1947.

16. On behalf of respondent it was argued that the service condition of petitioner would be governed by conditions laid down in her appointment letter Ex. P-1. After due consideration, I am not in agreement with the aforesaid submission for the reasons discussed hereinabove. The petitioner is a workman under section 2(s) of Industrial Disputes Act, 1947, therefore, she would be governed by the statutory provisions of Industrial Disputes Act, 1947 while adjudicating upon her termination. Therefore, the conditions laid down in appointment letter Ex. P-2 would not be seen but the statutory provisions of Industrial Disputes Act, 1947 would be relevant.

17. The petitioner has categorically deposed that when she was terminated from service at that time more than three hundred workmen were working with the respondent. The respondent has not disputed this fact. Therefore, section 25-N of Industrial Disputes Act, 1947 is relevant which lays down the conditions precedent to retrenchment of workman, it reads as under:

**“Conditions precedent to retrenchment of workmen.—**(1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,—

- (e) the workman has been given three months' notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and
- (f) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf”.

18. Under the aforesaid provision of law, respondent was under the legal obligation to serve three month's notice in writing upon the petitioner before terminating her services. It is undisputed that the petitioner was appointed as a technician *vide* appointment letter Ex. P-1 dated 1st October, 1991. Since, the petitioner is a workman under the Industrial Disputes Act, 1947, therefore, before terminating her services, respondent was to comply with the statutory provisions of the Act and as per section 25-N, respondent was required to serve three month's notice upon the petitioner.

19. Ex. P-10 is the notice dated 1-8-2008 served upon the petitioner by the respondent *vide* which her services were terminated *w.e.f.* 31-10-2008. No doubt, in this notice the statutory period of three month's has been given to the petitioner but at the same time I am of the view that this notice is not sufficient to comply with the provisions of section 25-N of the Act. As section 25-N (1) (b) the respondent was required to seek prior permission of the appropriate government or such authority as may be specified by the Government by notification by making an application in this behalf before terminating the services of petitioner. In this case, no such permission has been brought in evidence by the respondent. For the same respondent was required to file an application as section 25-N (2) says that an application for permission under sub section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workman concerned in the prescribed manner. There is nothing in evidence to suggest that respondent has complied with the aforesaid provisions of law. I do not find any evidence to show that respondent has obtained the permission from the appropriate government by making an application and the application was also



served upon the petitioner. In the absence of compliance of provisions of section 25-N of the Act, the termination of petitioner is illegal and unjustified and liable to set aside.

20. On behalf of petitioner arguments were advanced that her termination was also against the provisions of sections 25-G and 25-H of the Industrial Disputes Act, 1947. No doubt, the petitioner has filed the claim petition in support of said plea. But this Court is to answer the reference and I am of the view that the claim petition must be in consonance with the scope of reference. The reference is specifically qua the illegality of termination of services of petitioner in violation of section 25-N of Industrial Disputes Act, 1947. There is no reference that services of petitioner were terminated in violation of sections 25-G and 25-H of the Industrial Disputes Act, 1947. As the result, the claim filed by the petitioner pleading the violation of sections 25-G and 25-H of Industrial Disputes Act, 1947 is beyond the scope of reference. Consequently, the same cannot be discussed and no finding can be given by this Court regarding the alleged violation of section 25-G and 25-H of Act on the part of respondent.

21. Accordingly, for the aforesaid reasons issue No.1 is answered in favour of petitioner whereas issue no.3 is answered against the respondent as petition is maintainable because the petitioner is a workman under section 2(s) of the Industrial Disputes Act, 1947 and it stands proved that her services were wrongly and illegally terminated by the respondent without complying with the provisions of section 25-N of the Act.

*Issue No .2 :*

22. For the reason recorded hereinabove while discussing issue No.1 & 3, the termination of services of petitioner *w.e.f.* 31-10-2008 by the respondent is hereby set aside. As the result, petitioner is entitled for reinstatement with seniority and continuity. However, the petitioner is not entitled to back wages as it is settled law that back wages cannot be granted mechanically when the order of termination is declared illegal. Taking into account all the facts and circumstances of the case, to my mind the petitioner is not entitled to back wages. Accordingly, this issue is decided in favour of petitioner.

*Relief :*

For the reasons recorded hereinabove, the claim petition is allowed and as such the termination of services of petitioner from 31-10-2008 by the respondent is set aside and the petitioner is ordered to be reinstated in service forthwith with seniority and continuity but without back wages and as such the reference is answered accordingly in favour of petitioner. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 26 th Day of March, 2013.

By order,  
Sd/-  
Presiding Judge,  
Industrial Tribunal-cumLabour Court, Shimla.

**IN THE COURT OF PURENDER VAIDYA, PRESIDING JUDGE, INDUSTRIAL  
TRIBUNALCUM-LABOUR COURT, SHIMLA, (H.P) CAMP AT NALAGARH**

**Ref. No. 57 of 2010**

Instituted on. 1-5-2010

Decided on 1-4-2013

Suresh Kumar S/o Shri Jagdish Chand R/o Village & P.O Utpur, Tehsil & District  
Hamirpur, H .P. *.. Petitioner*

*Vs*

The Managing Director M/s Nexue Health & Beauty Care Pvt., Ltd. Plot No. 96, EPIP,  
Phase-1, Jharmajri, Baddi, District Solan, H. P. *.. Respondent*

**Reference under section 10 of the Industrial Disputes Act, 1947**

*For petitioner :* Shri J.C Bhardwaj, AR.

*For respondent :* Shri Rajeev Sharma, Advocate.

**AWARD**

The following reference has been received from appropriate government for adjudication:

**“Whether the termination of Shri Suresh Kumar S/o Shri Jagdish Chand by Managing Director M/s Nexue Health & Beauty Care Pvt., Ltd. Plot No. 96, EPIP, Phase-1, Jharmajri, Baddi, District Solan, HP. w.e.f. 16-11-2008 without serving chargesheet and without conducting any domestic enquiry and without complying the provisions of the Industrial Disputes Act, 1947 as alleged by the workman is proper and justified? If not, to what relief of back wages, seniority and past service benefits the above aggrieved workman is entitled to?”**

2. The petitioner filed the claim petition stating that he was employed by the respondent in January, 2008 and served till 16-11-2008 when his services were illegally terminated in violation of section 25-F of the Act. The petitioner had completed 240 days in a calendar year and junior to him were also retained by the respondent which is clear violation of the provisions of sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947. It was also stated that before terminating the services of petitioner no enquiry was conducted against him. Consequently, petitioner prayed to set aside his termination and to reinstate him with full back wages and other consequential service benefits.

3. The respondent contested the claim petition by filing reply wherein it was stated that the petitioner joined his duties on 1-8-2008 and thereafter he remained absent from 17-11-2008. He was paid wages @ ₹ 3,000/- per month for eight hours and no over work was taken. The petitioner has abandoned the job by remaining absent for more than 10 days continuously. It was further stated that the petitioner has never completed 240 days in twelve calendar months. The services of petitioner were never terminated in fact he abandoned the job at his own. Consequently, respondent prayed for the dismissal of the claim petition.

4. Petitioner filed rejoinder wherein he denied all the averments made by the respondent in reply and further reasserted the facts already stated by him in claim petition.

5. On the pleadings of the parties the following issues were framed.

1. Whether the termination of the services of shri Suresh Kumar by the management of M/s Nexus Health and Beauty Care w.e.f. 16-11-2008 is illegal and unjustified?

.. OPP

2. Relief.

6. The aforesaid issues were read over and explained to both the parties. No other issue was pressed or claimed. Thereafter, the case was fixed for the evidence of petitioner. Petitioner availed as many as five opportunities to lead evidence. On 1-4-2013 neither petitioner nor any evidence on his behalf was present. Although, on behalf of petitioner one more opportunity was prayed to lead evidence which was strongly objected to by the respondent.

7. After due consideration, the prayer of petitioner was rejected and the petitioner evidence was closed by the order of Court.

8. For the reasons to be recorded hereinafter my findings on the aforesaid issues are as under:

*Issue No.1 :* No

*Relief :* Reference answered in affirmative against the petitioner per operative part of award.

### **Reasons for finding**

*Issue No.1 :*

9. The burden was upon the petitioner to prove that his services were wrongly and illegally terminated by the respondent in violation of the provisions of Industrial Disputes Act, 1947. But petitioner himself did not appear in the Court as a witness and no other evidence was led by him in support of his claim. The absence of petitioner is suggesting that he is not interested to press his claim petition despite availing opportunities to lead evidence. In the absence of any evidence, the claim filed by the petitioner is dismissed. As the result, issue no.1 is decided against the petitioner.

*Relief :*

For the reason recorded hereinabove, he claim of petitioner is dismissed and as such the petitioner is not entitled to any relief from this Court. As the result the reference is decided accordingly against the petitioner. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 1 st day of April, 2013.

By order,  
Sd/-  
Presiding Judge,  
Industrial Tribunal-cum-Labour Court, Shimla.

Samtal woker Union V/s M.D Samtal Group Corporate & others.  
2-3-2013:

*Present:* Sh. R.K, Khidtta, Advocate for peititioner Sh. Paritosh Sharma, Advocate vice csl.for respondent.

I have persued the order passed by Hon'ble High Court in CWPIIL No. 11 of 2012 CWP No. 4159 of 2012-F dated 18.12.2012 wherein the parties have entered into a stttlement.

The details of settlement arementioned in the order passed by Hon'ble High Court. It has been directed by Hon'ble High Court that in view of settlement arrived at between the parties, all the proceedings pending between union and the management under the Industrial Disputed Act, 1947 shall be deemed to have been settled. The present reference is also related to the dispute between union and management. Consequently, in the light of said order passed by Hon'ble High Court, this reference also stands amicably settled. The award is accordingly passed. The order passed by the Hon'ble High Court shall from part of this award. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced.  
2-3-2013

By order,  
Sd/-  
*Presiding Judge, Labour Court, Shimla.*

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**IN THE COURT OF PURENDER VAIDYA, PRESIDING JUDGE, INDUSTRIAL  
TRIBUNALCUM-LABOUR COURT, SHIMLA, (H.P.)**

**Ref. No. 18 of 2010**

Instituted on. 12-4-2010  
Decided on 14-3-2013

Sandeep Kumar S/o Shri Inder Singh R/o Ambota, P.O Taksal, Tehsil Kasauli, District Solan, H.P. . . *Petitioner*

*Vs*

M.D/ Factory Manager M/s Richfeel Health and Beauty Pvt., Ltd., Village Taksal (Parwanoo) Tehsil Kasauli, District Solan, H.P. . . *Respondent*

**Reference under section 10 of the Industrial Disputes Act, 1947**

*For petitioner :* Shri Niranjana Verma, Advocate.

*For respondent :* Shri A.K Bakshai, Advocate.

**AWARD**

The following reference has been received from appropriate government for adjudication:

**“Whether the termination of Shri Sadeep Kumar S/o Shri Inder Singh by Factory Manager, M.s Richfeel, Health and Beauty Pvt., Ltd. Village Taksal (Parwanoo), Tehsil Kasuali, District Solan, H.P w.e.f. 13-10-2008 without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, to what back wages, seniority, service benefits and relief the above named workman is entitled to?”**

2. The petitioner filed the claim petition stating that he was appointed by the respondent on 3.10.2007 as helper on monthly salary of ₹ 3,000/-per month and remained as such till 13-10-2008. On 8-10-2008, the respondent issued a chargesheet upon the petitioner which was replied by him through post on 10-10-2008. The respondent terminated the services of petitioner on 13-10-2008 orally without complying with the mandatory provisions of I.D Act as no enquiry was conducted against the petitioner. Even no notice and retrenchment compensation was paid/given to him before terminating the services of petitioner. Junior workmen to petitioner have been retained by the respondent. Consequently, petitioner prayed to set aside his termination and to reinstate him with full back wages and other consequential service benefits.

3. The respondent contested the claim of petitioner by filing a reply wherein preliminary objections as to maintainability and suppression of material facts were raised. It is stated that the petitioner was a habitual offender and was involved in slapping/manhandling fellow workers and superior officers of the company. The petitioner thrashed and given beatings to senior officer Shri Yog Raj on 7-10-2008 with the help of his local friends, hence, chargesheet dated 8-10-2008 was issued to petitioner but the petitioner failed to reply the chargesheet. Thereafter, the management of respondent company decided to dismiss the services of petitioner w.e.f. 13-10-2008. On merits, respondent stated that the petitioner was given opportunity to mend his ways and improve his discipline but to no effect. As the result, respondent prayed for the dismissal of the claim petition.

4. No rejoined was filed. On the pleadings of the parties, the following issues were framed.

1. Whether the termination Shri Sandeep Kumar petitioner w.e.f.13-10-2008 is in violation of the provisions of Industrial disputes Act, 1947 . . . OPP
2. Relief.

5. The aforesaid issues were read over and explained to both the parties. No other issue was pressed or claimed.

6. Thereafter, the case was fixed for the evidence of petitioner but petitioner failed to lead any evidence in support of his claim.

7. For the reasons to be recorded hereinafter my findings on the aforesaid issues are as under:

*Issue No.1 :* No

*Relief:* Reference answered in affirmative against the petitioner per operative part of award.

### **Reasons for finding**

*Issue No.1 :*

8. The burden was upon the petitioner to prove that his services were wrongly and illegally termination by the respondent in violation of the provisions of Industrial Disputes Act,

1947. But petitioner himself did not appear in the Court as a witness and no other evidence was led by him in support of his claim. The petitioner has afforded as many as six opportunities to lead evidence but to no avail. The absence of petitioner is suggesting that he is not interested to press his claim petition despite affording opportunities to lead evidence. In the absence of any evidence, the claim filed by the petitioner is dismissed. As the result, issue No.1 is decided against the petitioner.

*Relief:*

For the reason recorded hereinabove, he claim of petitioner is dismissed and as such the petitioner is not entitled to any relief from this Court.

Hence, the reference is decided accordingly against the petitioner. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 14 th day of March, 2013.

By order,  
Sd/-  
Presiding Judge,  
*Industrial Tribunal-cum-Labour Court, Shimla.*

**R.49/2011**

Sh. Pardeep Kumar V/S M/S Johnson & Johnson Ltd, Baddi.  
25-3-2013

*Present:* Petitioner with Shri Narender Verma, Advocate for petitioner.

None for respondent.

Today, petitioner stated that the matter has been amicably compromised, so , he did not want to press the present claim. To this effect, statement of petitioner recorded. The following reference has been received from appropriate government for adjudication:

**“Whether termination of the services of Shri Pradeep Kumar S/o Shri gopal Krishan Village Delagi, P.O Koti, Tehsil & District, Solan, HP w.e.f.31-8-2010 by the Factory Manager/occupier M/s Johnson & Johnson Ltd., Jharmajari, Tehsil Baddi District Solan, HP after conducting the enquiry about which above ex-worker has alleged that same was not fait 7 justified, is proper and justified? If not, what amoun of back wages, seniority, past service benefits and relief the above worker is entitled to from above employer/management?”**

**“ If issue No.1 is answered that enquiry was fair & just, in that case, whether the punishment is prop-ordinate to the misconduct? If not, what relief the above ex-worker is entitled to from the management?”**

The petitioner has filed the claim in support of his plea that he was wrongly and illegally terminated by the respondent. However, today he did not want to press his claim petition. In the light of his statement, the claim petition filed by the petitioner is dismissed as the result the reference is decided against the petitioner and in affirmative to the effect that the termination of

services of petitioner by the respondent is proper and justified and he is not entitled to any relief from the respondent in any manner whatsoever.

In the light of these observations, both the issues of reference are decided accordingly. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced.

25-3-2013

By order, Sd/-  
Presiding Judge,  
Labour Court, Shimla.

**IN THE COURT OF PURENDER VAIDYA, PRESIDING JUDGE, INDUSTRIAL  
TRIBUNAL CUM-LABOUR COURT, SHIMLA, (H.P)**

**Ref. No. 94 of 2009**

Instituted on. 18-11-2009

Decided on 26-3-2013

Seema Sharma W/o Shri Vijay Bhushan Sharma R/Karol Vihar Chambaghat, Tehsil &  
District Solan, H.P. . . *Petitioner*

*Vs*

M/s Himachal Futuristic Communication, Ltd., (Wire-Line/Wire Less Division)  
Chambaghat, District Solan, H. P. . . *Respondent*

**Reference under section 10 of the Industrial Disputes Act, 1947**

*For petitioner :* Shri J.C Bhardwaj, AR.

*For respondent :* Shri Rahul Mahajan, Advocate.

**AWARD**

The following reference has been received from appropriate government for adjudication:

**“Whether termination of the services of Smt. Seema Sharma W/o Shri Vijay Bhushan Sharma *w.e.f.* 31-10-2008 by the management of M/s Himachal Futuristic Communication Ltd. (Wire Line/ Wire Less Division) Chambaghat, District Solan, H.P without serving any chargesheet and without holding any enquiry and without complying with the section 25-N of the Industrial Disputes Act, 1947 is legal and justified? If not, to what back wages, seniority service benefits and relief the above aggrieved is entitled to?”**

2. The petitioner filed the claim petition stating that she was appointed as Technical Assistant by the respondent on 22-12-1993 and as such joined her duties and thereafter she remained on probation for six months and after successfully completing her probation period she was confirmed as Technical Assistant. The respondent illegally terminated her services on 31-10-2008 without any enquiry or any notice. The petitioner stated that she was a skilled workman

and the Vice President (works) was not competent authority to terminate her services. Petitioner completed seventeen years of service with full devotion but no reason was assigned when she was terminated. In fact, the termination of petitioner was the result of a conspiracy at the instance of one workman Balwant Singh. The petitioner along-with other workers raised voice against the wrong doing of Balwant Singh who connived with the respondent management and as such the petitioner was made victim raising voice against Shri Balwant Singh. The respondent management without conducting any enquiry against the petitioner, terminated her services by declaring the petitioner as surplus employee of the company and no opportunity of being heard was given to the petitioner. Before terminating the services of petitioner, respondent management served three month's notice upon the petitioner but never paid any retrenchment compensation as per the statutory requirement and conditions of section 25-N of Industrial Disputes Act, 1947, hence, the termination of petitioner was bad in the eyes of law. The respondent also committed breach of section 25-G and 25-H of Industrial Disputes Act as they retained junior persons after terminating the petitioner. Hence, petitioner prayed to set aside her termination orders dated 31-10-2008 and also prayed that she be reinstated in service with full back wages, seniority, continuity along-with other consequential benefits.

3. The respondent contested the claim petition by filing a reply wherein it was not disputed that the petitioner was employed by the respondent. It was stated that in the appointment letter of petitioner it was clearly mentioned that her services could be terminated by serving one months notice and said clause was subsequently amended and three month's notice was added in the said clause. The services of petitioner were terminated w.e.f. 31-10-2008 *vide* letter dated 1-8-2008. The respondent stated that the petitioner was not a workman as she was Engineer and various employees were working under her. She was discharging the supervisory functions and she was governed by the Executive Conduct Discipline and Appeal Rules. As such petitioner did not fall within the definition of workman under section 2(s) of the Industrial Disputes Act, 1947. *Vide* letter dated 1-8-2008, petitioner was clearly informed that there was no manufacturing activity in the plant, so no work was expected in near future and for the aforesaid reason, her services were terminated. Respondent denied that the services of petitioner were terminated at the instance of Balwant Singh. It was also denied that the management had taken side with Balwant Singh. The other allegations of petitioner were also categorically denied. It was stated that after her termination the petitioner was gainfully employed. The respondent also denied that violation of section 25-G and 25-H of Industrial Disputes Act, 1947. Consequently, respondent prayed for the dismissal of the petition.

4. Petitioner filed rejoinder wherein she denied all the averments made by the respondent in reply and further reasserted the facts already stated by her in claim petition 5. On the pleadings of the parties, the following issues were framed:—

20. Whether the termination of the services of petitioner by the respondent management without serving any chargesheet and without holding any enquiry and without complying with section 25-N of the Industrial Disputes Act, 1947 is illegal and unjustified as alleged ?  
.. OPP
21. If issue no.1 is proved in affirmative to what service benefits the petitioner is entitled to?  
.. OPP
22. Whether the petition is not maintainable in view of the preliminary objections No. 1 and 3 as alleged?  
.. OPR
23. Relief.



6. The aforesaid issues were read over and explained to both the parties. No other issue was pressed or claimed. Evidence of both the parties on the aforesaid issues were recorded.

7. I have heard both the parties and gone through the record carefully.

8. For the reasons to be recorded hereinafter my findings on the aforesaid issues are as under:

*Issue No.1:* Yes.

*Issue No .2 :* Entitled for reinstatement with seniority and continuity but without back wages.

*Issue No. 3 :* No.

*Relief:* Reference answered in negative against the respondent per operative part of award.

### Reasons for finding

*Issue No.1 & 3 :*

9. Both these issues are interconnected and can be disposed of by a single finding.

10. After hearing both the parties and going through the record carefully, I am of the considered opinion that petitioner falls within the definition of workman as defined under section 2(s) of Industrial Disputes Act, 1947 and petitioner has also established that her services were wrongly and illegally terminated by the respondent without complying with the provisions of Industrial Disputes Act, 1947.

11. Section 2(s) of Industrial Disputes Act, 1947 reads as under:

**“workman” means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person—**

- (i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or
- (ii) who is employed in the police service or as an officer or other employee of a prison; or
- (iii) who is employed mainly in a managerial or administrative capacity; or
- (iv) who, being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.

12. Thus, from the aforesaid provision of law, it is clear that a person who is employed in Supervisory capacity will not be treated as a workman. The respondent has taken the plea that petitioner was working as Engineer and she was discharging supervisory function, so, she was not a workman. It is undisputed that petitioner was initially appointed as a Technician Assistant in 1994 and subsequently she was promoted to Engineer. The respondent has placed on record copy of Executive Conduct Discipline and Appeal Rules Ex. PB. As per section 2 (c) of said Rules, “Executive” means an employee of company in the scale (3250-500) and above. The word executives and officers are interchangeably used. They are in managerial or supervisory cadre. Officers/ Executives are authorized to take decisions and correspond, with outside agencies independently. Depending upon nature of duties executives may or may not have subordinate staff under them.

13. No doubt, as per aforesaid rule, it is not required that the executive must have subordinate staff under him but keeping in view the plea of respondent, it appears that respondent has alleged that petitioner was having subordinate staff under her. The petitioner in her testimony as PW-1 has categorically deposed that no workman was working under her and she was not discharging any administrative or managerial functions. In her cross-examination, she had denied that she had been doing supervisory and managerial function. She has also denied that she was governed by the Executive Conduct Discipline and Appeal Rules.

14. On behalf of respondent RW-1 Shri M.S Gupta, the General Manager of the company has given a general statement that the petitioner was discharging the duties of Engineer. But in his cross-examination, he has stated that he does not have any record to show that any other person was working under the petitioner. He has stated that petitioner used to issue verbal instructions to the workers/technicians who were working under her. But respondent did not examine any such technicians or workmen who were working under the petitioner. RW-1 has also stated that petitioner used to sanction short leave and used to forward leave application to the authority but again no such leave application was produced in evidence. RW-1 has further stated that petitioner was not authorized to issue any show cause notice to any workman.

15. Hence, taking into account all the aforesaid evidence on record, I am of the considered opinion that petitioner was not discharging supervisory or managerial function and as such she was working under the respondent as a workman as defined under section 2(s) of the Industrial Disputes Act, 1947.

16. On behalf of respondent it was argued that the service condition of petitioner would be governed by conditions laid down in her appointment letter Ex. P-2. After due consideration, I am not in agreement with the aforesaid submission for the reasons discussed hereinabove. The petitioner is a workman under section 2(s) of Industrial Disputes Act, 1947, therefore, she would be governed by the statutory provisions of Industrial Disputes Act, 1947 while adjudicating upon her termination. Therefore, the conditions laid down in appointment letter Ex. P-2 would not be seen but the statutory provisions of Industrial Disputes Act, 1947 would be relevant.

17. The petitioner has categorically deposed that when she was terminated from service at that time more than three hundred workmen were working with the respondent. The respondent has not disputed this fact. Therefore, section 25-N of Industrial Disputes Act, 1947 is relevant which lays down the conditions precedent to retrenchment of workman, it reads as under:

**“Conditions precedent to retrenchment of workmen.—**(1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,—

- (g) the workman has been given three months' notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and
- (h) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf”.

18. Under the aforesaid provision of law, respondent was under the legal obligation to serve three month's notice in writing upon the petitioner before terminating her services. It is undisputed that the petitioner was appointed as a Technical Assistant vide appointment letter Ex. P-2 dated 27-6-1994. Since, the petitioner is a workman under the Industrial Disputes Act, 1947, therefore, before terminating her services, respondent was to comply with the statutory provisions of the Act and as per section 25-N, respondent was required to serve three month's notice upon the petitioner.

19. Ex. P-7 is the notice dated 1-8-2008 served upon the petitioner by the respondent vide which her services were terminated *w.e.f.* 31-10-2008. No doubt, in this notice the statutory period of three month's has been given to the petitioner but at the same time I am of the view that this notice is not sufficient to comply with the provisions of section 25-N of the Act. As section 25-N (1) (b) the respondent was required to seek prior permission of the appropriate government or such authority as may be specified by the Government by notification by making an application in this behalf before terminating the services of petitioner. In this case, no such permission has been brought in evidence by the respondent. For the same respondent was required to file an application as section 25-N (2) says that an application for permission under sub section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workman concerned in the prescribed manner. There is nothing in evidence to suggest that respondent has complied with the aforesaid provisions of law. I do not find any evidence to show that respondent has obtained the permission from the appropriate government by making an application and the application was also served upon the petitioner. In the absence of compliance of provisions of section 25-N of the Act, the termination of petitioner is illegal and unjustified and liable to set aside.

20. On behalf of petitioner arguments were advanced that her termination was also against the provisions of sections 25-G and 25-H of the Industrial Disputes Act, 1947. No doubt, the petitioner has filed the claim petition in support of said plea. But this Court is to answer the reference and I am of the view that the claim petition must be in consonance with the scope of reference. The reference is specifically qua the illegality of termination of services of petitioner in violation of section 25-N of Industrial Disputes Act, 1947. There is no reference that services of petitioner were terminated in violation of sections 25-G and 25-H of the Industrial Disputes Act, 1947. As the result, the claim filed by the petitioner pleading the violation of sections 25-G and 25-H of Industrial Disputes Act, 1947 is beyond the scope of reference. Consequently, the same cannot be discussed and no finding can be given by this Court regarding the alleged violation of section 25-G and 25-H of Act on the part of respondent.

21. Accordingly, for the aforesaid reasons issue No.1 is answered in favour of petitioner whereas issue no.3 is answered against the respondent as petition is maintainable because the petitioner is a workman under section 2(s) of the Industrial Disputes Act, 1947 and it stands proved that her services were wrongly and illegally terminated by the respondent without complying with the provisions of section 25-N of the Act.

*Issue No. 2 :*

22. For the reason recorded hereinabove while discussing issue No.1 & 3, the termination of services of petitioner *w.e.f.* 31.10.2008 by the respondent is hereby set aside. As the result, petitioner is entitled for reinstatement with seniority and continuity. However, the petitioner is not entitled to back wages as it is settled law that back wages cannot be granted mechanically when the order of termination is declared illegal. Taking into account all the facts and circumstances of the case, to my mind the petitioner is not entitled to back wages. Accordingly, this issue is decided in favour of petitioner.

*Relief :*

For the reasons recorded hereinabove, the claim petition is allowed and as such the termination of services of petitioner from 31-10-2008 by the respondent is set aside and the petitioner is ordered to be reinstated in service forthwith with seniority and continuity but without back wages and as such the reference is answered accordingly in favour of petitioner. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 26 th Day of March, 2013.

By order,  
Sd/-  
*Presiding Judge,*  
*Industrial Tribunal-cum-Labour Court, Shimla.*

**IN THE COURT OF PURENDER VAIDYA, PRESIDING JUDGE, INDUSTRIAL  
TRIBUNALCUM-LABOUR COURT, SHIMLA, (H.P)**

**Ref. No. 62 of 2012**

Instituted on. 5-9-2012  
Decided on 7-3-2013

Shyam Singh Barsanta S/o late Shri Bhagmal Barsanta R/o Village Dhanat, P.O. Tikkari,  
Tehsil Chopal District Shimla, H.P. . . *Petitioner*

*Vs*

1. The Project Manager Administration and HR Everonn Education Ltd., Set No.
2. Kailash Niwas, Fingask Estate, Shimla-3, H.P.
2. The Everonn Education Ltd., registered office 82-IV, Avenue Ashok Nagar, Chennai  
(South India)-600083, through its Manager. . . *Respondents*

**Reference under section 10 of the Industrial Disputes Act, 1947**

*For petitioner :* Shri Narveen Singh Chauhan, Advocate.

*For respondents :* Exparte.

**AWARD**

The following reference has been received from appropriate government for adjudication:

**“Whether Shri Shyam Singh Barsanta S/o late Shri Bhagmal Barsanta R/o Village Dhanat, P.O. Tikkari, Tehsil Chopal, district Shimla, H.P. who was appointed as IT Instructor initially in Government Sr. Secondary School Mandal, Tehsil Jubbal District Shimla and then at GSSS Pandranoo, Tehsil Jubbal, District Shimla through the Project Manager (Admn. & HR) Everonn Education, Limited, Set No.2, Kailash NIwas, Fingask Estate, Shimla-3 is covered under the definition of “workman” as per section 2(s) of the Industrial Disputes Act, 1947? If yes, whether termination of the services of Shri Shyam Singh Barsanta s/o late Shri Bhagmal Barsanta by the Project Manager (Admn. & HR) Everonn Education, Limited, Set No.2, Kailash NIwas, Fingask Estate, Shimla-3 w.e.f. 4-7-2011 without complying with the provisions of the Industrial Disputes Act, 1947 is proper and justified? If not, what relief of service benefits i/c seniority, back wages and compensation Shri Shyam Singh Barsanta S/o late Shri Bhagmal Barsanta is entitled to from the above employer?”**

2. The petitioner filed the claim petition stating that he was appointed as Computer IT Instructor by the respondent at Government Senior Secondary School, Mandal, Tehsil Jubbal District Shimla, H.P where he worked from 27-8-2012 to 31-12-2009. Thereafter, he was transferred to Senior Secondary School, Pandranoo, Tehsil Jubbal District Shimla and joined there on 01-01-2010 and remained upto 3-7-2011. Thereafter, his services were illegally terminated by the respondents. The services of petitioner were wrongly terminated on the basis of false complaint. The respondents retained junior person namely Nand Lal at Senior Secondary School, Mandal.

Thereby the respondents violated the principle of last come first go. The petitioner further stated that the respondents did not pay him due salary. No enquiry was conducted against him before terminating his services. Hence, petitioner prayed to set aside his termination *w.e.f.* 4-7-2011 and also prayed for consequential service benefits.

3. Respondents were served but did not put appearance in the Court, therefore, they were proceeded against *exparte*.

4. *Exparte* evidence of petitioner was recorded. I have heard Ld. Counsel for petitioner and gone through the record of the case carefully.

5. The un-rebutted *exparte* evidence of petitioner are sufficient to prove his claim.

6. The evidence on record are sufficient to prove that the petitioner was a workman under the respondents. The petitioner has categorically deposed that he was appointed as Computer IT Instructor by the respondents *w.e.f.* 27-8-2008. The appointment letter of petitioner Ex. PW-1/B is revealing that he was deputed as Computer IT Instructor in Government Senior School, Mandal *w.e.f.* 27.8.2008. So, the petitioner was employed to do technical or skilled work by the respondents. The agreement/contract Ex. PW-1/C is revealing that he was employed on the salary of ₹ 5,000/- per month. So, the petitioner fulfills the requirements of workman as defined under section 2(s) of Industrial Disputes Act, 1947 which reads as under:

**"workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute."**

7. The petitioner Shyam Singh filed his affidavit Ex. PW-1/A in the Court when he stepped into the witness box as PW-1 wherein he deposed all the facts stated by him in the claim petition. He also tendered in evidence the copy of appointment letter Ex. PW-1/B, copy of agreement Ex. PW-1/C, copy of review-cumtransfer order Ex. PW-1/D, copy of work and conduct certificate issued by the Principal Ex. PW-1/E, copies of two complaints Ex. PW-1/F and Ex. PW-1/G and copy of letter issued by the Principal to reconsider the case of petitioner Ex. PW-1/J.

8. The aforesaid testimony of petitioner as well documentary evidence established that the petitioner was appointed as IT Computer Instructor by the respondents and he was removed from service *w.e.f.* 4.7.2011, admittedly on some complaint. The respondents did not contest the claim of the petitioner, therefore, it could not be proved that there was genuine complain against the petitioner. Moreover, there is nothing on record to suggest that on the basis of complaint, enquiry was conducted against the petitioner and the petitioner was found guilty. Thus, it stands established that the petitioner was removed from service without any enquiry.

9. The appointment letter of petitioner Ex. PW-1/B is sufficient proof to establish that he was employed on 27-8-2008. The other evidence produced by the petitioner are revealing that he was removed from service *w.e.f.* 4-7-2011. That means petitioner worked under the respondents *w.e.f.* 27-8-2008 to 3-7-2011 which comes to more than 240 days in a calendar year preceding to the date of his removal *w.e.f.* 4-7-2011. And under section 25-F of Industrial Disputes Act, 1947, the respondents were under the legal obligation to serve one month's notice upon the petitioner or to pay one month's salary and compensation to the petitioner in lieu of such notice before terminating his services. But, no such steps were taken by the respondents before terminating the petitioner. Hence, the termination of petitioner is not sustainable under law.

10. The petitioner has also alleged that after his termination, respondents retained junior person Nand Lal. This fact has also been deposed by the petitioner in his affidavit Ex. PW-1/A. There is no rebuttal evidence on behalf of the respondents to counter this evidence. Hence, it is also established that the respondents retained the junior after terminating the services of petitioner. Here, section 25-G of Industrial Disputes act, 1947 is relevant which reads as under:

**“Procedure for retrenchment.**—Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman.”

11. In this provision of law, respondents were to follow the principle of last come first go. But, respondents terminated the services of senior and retained junior person. Consequently, the provisions of section 25-G were also violated by the respondents.

12. For the reasons recorded hereinabove, the claim filed by the petitioner is allowed and the petitioner is hereby declared as workman as defined under section 2(s) of Industrial Disputes Act, 1947 as he was appointed as IT Computer Instructor by the respondents. It is further held that that the services of petitioner were wrongly and illegally terminated by the respondents against the provisions of Industrial Disputes Act, 1947. Therefore, his termination *w.e.f.* 4-7-2011 is hereby set aside and as such the petitioner is ordered to be reinstated in service with seniority and continuity. However, the petitioner is not entitled to back wages as it is settled law that back wages cannot be granted mechanically when the order of termination is declared illegal. Taking into account all the facts and circumstances of the case, to my mind the petitioner is not entitled to back wages. Accordingly, the reference is decided in favour of petitioner and against the respondents. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 7 th day of March, 2013.

By order,  
Sd/-  
Presiding Judge,  
*Industrial Tribunal-cum-Labour Court, Shimla.*

## CLARIFICATION OF NAME

I, Saurabh Walia son of Shri Subhash Ahluwalia, R/o Secretary Cottage, US Club, Shimla-171 001, H.P. hereby declare that my name is spelt and written as Saurabh Walia as per record. All to kindly note.

Saurabh Walia  
son of Shri Subhash Ahluwalia,  
R/o Secretary Cottage,  
US Club, Shimla-171 001, H.P.